Supreme Court, U.S.
FILED

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No.

IN THE

Supreme Court of the United States

STATE OF MARYLAND,
Petitioner,

v.

JOSEPH JERMAINE PRINGLE,
Respondent.

On Petition For Writ of Certiorari To The Court of Appeals of Maryland

PETITION FOR WRIT OF CERTIORARI

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
Solicitor General

Office of the Attorney General
Criminal Appeals Division
200 Saint Paul Place
Baltimore, Maryland 21202
(410) 576-6422

Counsel for Petitioner

**Counsel of Record*

QUESTION PRESENTED

Where drugs and a roll of cash are found in the passenger compartment of a car with multiple occupants, and all deny ownership, does the Fourth Amendment prohibit a police officer from arresting the occupants of the car?

PARTIES TO THE PROCEEDING

The caption contains the names of all the parties below.

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Petitioner, the State of Maryland, respectfully requests that a writ of certiorari issue to review the judgment of the Court of Appeals of Maryland.

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland is reported at 370 Md. 525, 805 A.2d 1016 (2002) (App. 1a-49a). The opinion of the Court of Special Appeals of Maryland is reported at 141 Md. App. 292, 785 A.2d 790 (2001) (App. 50a-77a). The opinion of the Circuit Court for Baltimore County denying Pringle's motion to suppress is unreported. (App. 78a-79a).

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on August 27, 2002. (App. 1a). This petition is filed within 90 days as required by Rule 13 of the Rules of the Supreme Court. Therefore, jurisdiction of this Court is properly invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment IV:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment XIV:
Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On August 7, 1999, at 3:16 a.m., Officer Jeffrey Snyder of the Baltimore County Police Department stopped a Nissan Maxima for speeding. (App. 2a-3a, 50a). In the vehicle were Donte Partlow, the driver and owner, as well as Respondent Pringle, the front seat passenger, and Otis Smith, the back seat passenger. (App. 3a).

When Partlow opened the glove compartment to search for his vehicle registration, Officer Snyder saw a large quantity of rolled up money. (App. 3a). Officer Snyder then asked for and received Partlow's consent to search the vehicle. (App. 3a). The search uncovered $763.00 in cash from the glove compartment, and five baggies containing suspected cocaine, found inside a back seat armrest. (App. 3a).

All three occupants of the car denied ownership of the drugs and money, and all were arrested and taken to the

station house. (App. 3a-4a). After waiving his *Miranda*[1] rights, Pringle confessed that the drugs belonged to him, and that neither Partlow nor Smith knew he had the cocaine. (App. 4a). Partlow and Smith were released, and Pringle was charged with possession with intent to distribute cocaine. (App. 4a).

A hearing was held on Pringle's motion to suppress evidence on March 23, 2000. (App. 78a). The suppression court ruled that the officer had probable cause to arrest Pringle and that Pringle's statement was properly obtained. (App. 79a). On April 11, 2000, Pringle was convicted by a jury of possession with intent to distribute cocaine and possession of cocaine. (App 1a). Pringle was sentenced to a term of ten years' incarceration on May 9, 2000. (App. 1a).

On appeal, a three-judge panel of the Court of Special Appeals of Maryland affirmed Pringle's convictions. (App. 50a-77a). A majority rejected Pringle's assertion that the police lacked probable cause to arrest him and that his confession was the fruit of an illegal arrest. (App. 56a-61a). The majority concluded: "The circumstances were sufficient to constitute probable cause to make an arrest." (App. 61a). One judge dissented, finding probable cause to arrest Pringle lacking. (App. 66a-77a). This judge found significant the fact that, although Pringle "may have been within an arm's reach of the drugs, in fact, to expose the drugs, he would have had to stretch his body, maneuver around the back of his seat, and pull down the arm rest." (App. 74a).

On certiorari review, the Court of Appeals of Maryland

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[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

reversed, in a four-to-three decision. (App. 1a-49a). According to the majority, "the mere finding of cocaine in the back armrest" was insufficient to establish probable cause to arrest a front seat passenger. (App. 21a). The majority discounted the discovery of the cash in the glove compartment because the glove compartment was closed until the driver searched for the vehicle registration. (App. 22a). Without citation, the majority noted: "Simply stated, a policy of arresting everyone until somebody confesses is constitutionally unacceptable." (App. 22a).[2]

Three judges dissented, stating at the outset that: "The majority's holding that the police officers lacked probable cause to arrest [Pringle] for possession of cocaine is based primarily upon an erroneous blending of the probable cause standard for an arrest and the sufficiency of evidence standard for a conviction." (App. 36a). The dissent found probable cause to arrest Pringle given that three men were traveling in a vehicle around 3:00 a.m. with a large amount of cash and several baggies of cocaine, and, further, that the location of the drugs and money would lead a reasonable officer to conclude that the three had joint constructive possession of the contraband. (App. 38a). The dissent concluded its discussion of probable cause: "I fear that the majority's holding today will, in effect, 'unduly hamper law enforcement' in this State." (App. 46a) (quoting *Brinegar v. United States*, 338 U.S. 160, 176

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[2]The majority then addressed the issue of attenuation, finding no causal break between the arrest and the confession under *Brown v. Illinois*, 422 U.S. 590 (1975). (App. 24a-33a). That finding is not challenged here.

(1949)).

REASONS FOR GRANTING THE WRIT

As a practical matter, the court below has created a per se rule that any time a police officer discovers contraband secreted in a car occupied by several persons, the officer lacks probable cause to arrest any of the passengers. This decision should not be allowed to stand and, indeed, should be reviewed by this Court for several reasons. First, although this Court has set forth the general standards for assessing probable cause, it has not ruled on the standards for determining the issue in the context of multiple suspects. Second, because this Court has never addressed the issue of probable cause as it relates to multiple persons found in the vicinity of drugs, the lower courts have reached conflicting results in similar factual circumstances. Third, this is a frequently recurring and important issue that requires this Court's definitive ruling.

I. This Court's Probable Cause Precedent Does Not Resolve the Issue in the Multiple-Suspect Context Here.

This Court has not squarely addressed the probable cause issue before it here, i.e., whether in a multi-suspect case arising out of a car stop, the police have probable cause to arrest all occupants of the vehicle when contraband is found in the passenger compartment. Further, there is some tension between this Court's more general probable cause to arrest decisions and those that appear to require a more particularized showing before someone may lawfully be arrested. With this case, however, that gap in the law can be filled.

Over half a century ago, this Court delineated the general standards to assess probable cause in the context of warrantless arrests. *See Brinegar v. United States*, 338 U.S. 160 (1949). The standard is less than would justify conviction for the crime, but it is more than "bare suspicion." *Id.* at 175 (citing *Locke v. United States*, 11 U.S. (7 Cranch) 339, 348 (1813)). Harkening back to *Carroll v. United States*, 267 U.S. 132 (1925), the Court concluded:

> Probable cause exists where "the facts and circumstances within their (the officers') knowledge and of which they had reasonably trustworthy information (are) sufficient in themselves to warrant a man of reasonable caution in the belief that" an offense has been or is being committed.

Id. at 175-76 (quoting *Carroll*, 267 U.S. at 162).

Brinegar balances protection for the privacy of law-abiding citizens with the "fair leeway" in the enforcement of the law necessary for the community's protection. *Id.* at 176. As the Court summed up:

> The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating these often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

Id.

In the years since *Brinegar* was decided, the Court has consistently preserved this delicate balance. *See, e.g., Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979); *Gerstein*

v. Pugh, 420 U.S. 103, 111-12 (1975); *Beck v. Ohio*, 379 U.S. 89, 91 (1964); *Draper v. United States*, 358 U.S. 307, 312-13 (1959).

The determination of probable cause requires that the totality of the circumstances be assessed. *See Illinois v. Gates*, 462 U.S. 213, 230-31 (1983). Such circumstances are to be viewed "not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." *Id.* at 232. Even observations that might be "readily susceptible to an innocent explanation" are to be considered in the Fourth Amendment determination. *United States v. Arvizu*, 122 S. Ct. 744, 751 (2002). Moreover, the inferences drawn by law enforcement officers should be given "due weight" by a reviewing court. *Ornelas v. United States*, 517 U.S. 690, 699 (1996).

These principles relating to probable cause generally have been developed and applied to a single suspect, where the issue was simply whether there was the necessary quantum of evidence to satisfy the Fourth Amendment standard. Other cases, however, have been decided in the context of whether probable cause to arrest one person necessarily gives the police the requisite justification to arrest an associate or companion of the arrestee.

Just one year before *Brinegar* was decided, this Court addressed this point in *United States v. Di Re*, 332 U.S. 581 (1948). There, a rear seat passenger visibly held counterfeit gas ration coupons he told officers he received from the driver, Buttitta. *Id.* at 583. The passenger to the right of the driver was Di Re, who did nothing other than sit in the car. *Id.* On these facts, this Court ruled that the arrest of Di Re was not supported by probable cause,

noting that "whatever suspicion might result from Di Re's mere presence seems diminished, if not destroyed, when Reed, present as the informer, pointed out Buttitta, and Buttitta only, as a guilty party." *Id.* at 594. Because Buttitta was singled out, probable cause did not extend to Di Re.

Thirty years later, in a different context, the Court built upon the foundation of *Di Re* in *Ybarra v. Illinois*, 444 U.S. 85 (1979). In that case, a patron of the Aurora Tap Tavern was searched while officers were executing a search warrant at the premises after having seen drugs on the person of the bartender and behind the bar. *Id.* at 87-88. Finding the search illegal, this Court stated: "Where the standard is probable cause, a search or seizure of a person must be supported by probable cause particularized with respect to that person." *Id.* at 91.

Taken together, *Ybarra* and *Di Re* have been understood to stand for the proposition that probable cause must be examined on an individualized basis, and not by a person's mere proximity to someone else suspected of criminal activity. More recently, however, this Court cast some doubt on this proposition in the context of a car search where both a driver and passengers were present. In *Wyoming v. Houghton*, 526 U.S. 295, 297 (1999), a car was stopped for speeding and driving with a faulty brake light. After developing probable cause to search the car based on the driver's admission to using drugs, the officer searched the purse on the back seat belonging to passenger Sandra Houghton. *Id.* at 298. Distinguishing both *Ybarra* and *Di Re*, the Court upheld the search. *Id.* at 303. The Court reasoned that a car passenger "will often be engaged in a common enterprise with the driver, and have the same interest in concealing the fruits or evidence of their

wrongdoing." *Id.* at 304-05.

Although *Houghton* was decided in the context of the automobile exception to the warrant requirement, it has been understood as a departure from the principles of *Di Re* and *Ybarra*. Not before the Court in *Houghton*, but at issue in the present case, is whether probable cause exists to arrest passengers as well as the driver when contraband is found secreted in the passenger compartment of a vehicle. Given the tension between the individualized suspicion cases of *Ybarra* and *Di Re*, as opposed to the "common enterprise" approach of *Houghton*, it is understandable how lower courts have reached opposite results on factually similar cases. The present case can be used to harmonize these decisions.

II. The Lower Courts Are in Conflict on the Issue of Assessing Probable Cause in Multi-Suspect Cases.

The lower federal and state courts have struggled with applying the probable cause standard in the context of multi-suspect arrests, leading to differing and thus conflicting results. The decision below is typical of one view, which stresses the importance of probable cause being linked to a specific individual. Other courts have focused less on a particular person, looking rather to more generalized notions of probable cause. This confusion is understandable given that this Court has never directly confronted the question of probable cause in a factual context like the present one, and its prior decisions in somewhat analogous situations have given support to both positions held by the lower courts.

Relying on *Di Re*, the Maryland court below found probable cause lacking to arrest Pringle. (App. 19a-20a).

As the Maryland court stated: "The Supreme Court held that Di Re's mere presence in a vehicle involved in criminal activity, without more, did not cause him to lose his right to be free from a search of his person." (App. 20a). Presumably, the Maryland court below would have upheld the arrest of the driver and owner of the car, but believed that Pringle's "mere presence" in the car did not justify his arrest.

Stressing the importance of probable cause being linked to a specific individual, other courts have also relied upon *Di Re* in ruling that an officer did not have probable cause to arrest a passenger present in a vehicle where drugs or other contraband were found. Typical is *People v. Foster*, 788 P.2d 825 (Colo. 1990), where the police arrested both the driver and passenger of a pickup truck that was transporting a suspected stolen motorcycle. *Id.* at 826-27. Believing *Di Re* to be the controlling precedent, the Supreme Court of Colorado held that the mere presence of the passenger, Foster, did not provide the officer with probable cause to arrest him, even where the passenger acknowledged that he was aware of the motorcycle in the back of the truck. *Id.* at 829. Other courts have relied upon *Di Re* in similar circumstances. *See, e.g., Rogers v. State*, 586 So. 2d 1148, 1151-52 (Fla. App. 1991) (no probable cause to arrest front-seat passenger of minivan when drugs found in pocket behind each of front seats); *State v. Jacobs*, 704 S.W.2d 300, 301-02 (Mo. App. 1986) (no probable cause to arrest back-seat passenger for underage alcohol offense when open and unopen cans of beer found in front seat floor area).

Di Re has also been relied upon in other multi-suspect contexts. In *People v. Harshbarger*, 321 N.E.2d 138 (Ill. App. 1974), officers received information that Robert

Leads had a large amount of marijuana in his possession. *Id.* at 139. When police went to Leads's house, three other persons, including Harshbarger, were seated in the living room. *Id.* Detecting a strong odor of burning marijuana, the officers arrested all four men. *Id.* Relying upon *Di Re*, the Illinois court concluded the arrest of Harshbarger was unlawful, because "[h]e was merely one of four persons sitting in the living room of a house in which the officers thought they smelled burning marijuana." *Id.* at 140. More recently, *Harshbarger* was relied upon by the Texas Court of Criminal Appeals to invalidate an arrest under similar circumstances. *See State v. Steelman*, 2002 WL 31398545 at *5 (Tex. Crim. App. Oct. 23, 2002) (en banc).

In like regard, other courts have relied upon *Ybarra*. In particular, these courts look to the language in *Ybarra* that "a person's mere propinquity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person." 444 U.S. at 91. In *State v. Jenison*, 442 A.2d 866 (R.I. 1982), a female passenger was arrested when police discovered cash and a weapon in the trunk of the car in which she was riding. *Id.* at 870. The Supreme Court of Rhode Island found probable cause lacking to arrest the passenger, relying on *Ybarra* for the proposition that her presence with someone suspected of criminal activity (the driver) did not, by itself, establish probable cause. *Id.* at 874. Similarly, a Texas state court relied upon *Ybarra* in holding that probable cause did not exist to arrest a passenger when narcotics were found on the driver after a dog alerted to the presence of drugs in a car stopped for speeding. *See Leday v. State*, 3 S.W.3d 667, 672 (Tex. App. 1999).

Still other courts, however, have reached the opposite result in multiple-suspect cases, recognizing that probable

cause does not mean more probable than not with respect to the identity of a particular person as the offender. In *State v. Horton*, 625 N.W.2d 362 (Iowa), *cert. denied*, 122 S. Ct. 288 (2001), for example, the court looked to *Brinegar* rather than *Di Re* in analyzing probable cause where a driver and passenger were stopped. After the driver admitted to the officer that there were some "roaches" in the ashtray and the officer saw marijuana butts there, the passenger Horton was arrested. *Id.* at 363. Horton argued that the actions of the driver could not be imputed to her, but the court ruled as follows: "The officers in Horton's case could have reasonably believed the marijuana had been smoked by Horton, her companion, both, or perhaps neither." *Id.* at 367.

In an Arkansas case, the police stopped a car with four occupants, and the officer smelled the odor of marijuana coming from the vehicle. *Brunson v. State*, 940 S.W.2d 440, 441 (Ark.), *cert. denied*, 522 U.S. 898 (1997). The court ruled that the smell gave rise to probable cause to believe an offense was being committed, as well as probable cause to arrest all occupants of the vehicle. *Id.* at 442. Rejecting Brunson's argument that "individualized" probable cause was needed to arrest him, the court stated: "Such an argument would lead to the illogical conclusion that none of the four occupants could have been arrested even though the smell of marijuana or its smoke was emanating from the enclosed space of the vehicle where all four occupants were present." *Id. Accord United States v. Buckner*, 179 F.3d 834, 838-39 (9th Cir. 1999) (passenger may be arrested when marijuana found secreted in car; reliance on *Ybarra* rejected), *cert. denied*, 528 U.S. 1094 (2000); *Fernandez v. Perez*, 937 F.2d 368, 370 (7th Cir. 1991) (probable cause exists to arrest all occupants of car

when metal-piercing bullets found in trunk); *Blake v. State*, 772 So. 2d 1200, 1206-07 (Ala. Crim. App. 2000) (individualized suspicion not needed to arrest driver or passenger when odor of burning marijuana emanates from car); *Jackson v. State,* 643 A.2d 1360, 1365-66 (Del. 1994) (all occupants of vehicle may be arrested when contraband found in non-secretive location; reliance on *Di Re* rejected), *cert. denied*, 513 U.S. 1136 (1995); *State v. Mitchell*, 482 N.W.2d 364, 368 (Wis. 1992) (probable cause to arrest two persons in car where officer smelled marijuana and saw smoke inside vehicle).

In analogous contexts, courts have ruled that probable cause to arrest one person is not negated simply because there may also be probable cause to arrest someone else. Where a car was involved in a fatal accident, and both occupants were taken to the hospital, the officer had probable cause to involuntarily extract blood from *both*, even though only one could have been driving. *See People v. Sutherland*, 683 P.2d 1192, 1196 (Colo. 1984). Where police suspect two people of the child-abuse murder of a young child, they may arrest either or both. *See State v. Johnson*, 682 So. 2d 385, 387 (Ala. 1996). *See also Matter of Grand Jury Investigation*, 692 N.E.2d 56, 57 (Mass.) (in investigating apparent rape of profoundly retarded and autistic young woman who lived with parents and brother, police had probable cause to believe either brother or father committed crime, and blood sample could be ordered from both), *cert. denied*, 525 U.S. 873 (1998); *Commonwealth v. Sangricco*, 379 A.2d 1342, 1344 (Pa. 1977) (where both Sangricco and estranged wife of shooting victim were present at time of shooting, police had probable cause to order neutron activation analysis test on both). *See generally* 2 Wayne R. LaFave, *Search and*

Seizure § 3.2(e) at 65 (3d ed. 1996) (probable cause exists in such situations because of "an investigative function which is served by the making of arrests").

These latter cases illustrate why it was reasonable, in this case, for Officer Snyder to arrest all three of the occupants of the car he stopped. Having seen a large roll of bills and a quantity of crack cocaine in the car, the officer may not have been certain who possessed the money and drugs, but he certainly was reasonable in believing that one or more of the current occupants were guilty of a crime. Experience, logic, and common sense suggest that when there are three occupants in a car, there is a fair probability that they are "engaged in a common enterprise with the driver," *Houghton*, 526 U.S. at 304, and all are implicated. Thus, under *Brinegar* and its progeny, the officer had probable cause to arrest Pringle (as well as the other two occupants).

Yet as shown above, there is a conflict in the lower courts on this issue in multiple-suspect cases, leading to results such as in the fractured decision below. The Court should take this opportunity to resolve the conflict, thereby ending the confusion engendered by cases such as *Di Re* and *Ybarra* on the one hand and *Brinegar* and *Houghton* on the other.

III. The Multiple-Suspect Probable Cause Issue is Frequently Recurring and of Great Importance to Law Enforcement and the Public.

Over two decades ago, this Court decided a different issue in a case with similar facts to the present one. In *New York v. Belton*, 453 U.S. 454, 455-56 (1981), all four men in the lawfully stopped car were arrested when the

officer smelled burnt marijuana and saw an envelope marked "Supergold." This Court had no occasion then to address the validity of the arrests, but that threshold issue needs to be resolved now. Countless times each day, officers make traffic stops and uncover contraband in multi-passenger situations. Police need the clarity of authority to know who may be arrested in such cases. The same issue arises when a trained drug sniffing dog alerts to the presence of narcotics in a vehicle, and officers need to know whether it gives rise to probable cause to arrest all of the occupants. *Cf. Florida v. Royer*, 460 U.S. 491, 506 (1983) (had police used dog to scan luggage, "a positive result would have resulted in his justifiable arrest on probable cause").

As shown above, this probable cause question in multiple suspect cases reaches far beyond the vehicle stop context. Any time the police are investigating a crime–be it driving while intoxicated, child abuse, rape, or murder–they must have the authority to arrest two suspects, even if only one could have committed the crime, where they know that one of the two (but not the other) *did* commit the crime. The sentiments expressed in a similar case apply with equal force here: "Suffice it to say that today's opinion will affect hundreds of thousands of future cases, because according to the majority, anytime there are two or more people involved at a crime scene, and there is any ambiguity as to which of them is the perpetrator, officers lack probable cause to arrest any of them. This is preposterous." *State v. Steelman,* 2002 WL 31398545 at * 16 (Tex. Crim. App. Oct. 23, 2002) (en banc) (Keasler, J., dissenting).

In sum, the decision below alters the balance this Court struck in *Brinegar*. By setting the probable cause bar

higher, the court below has, as the dissent below points out, "unduly hamper[ed] law enforcement." (App. 46a).

CONCLUSION

For the foregoing reasons, the State of Maryland respectfully requests that this Court issue a writ of certiorari to review the judgment of the Court of Appeals of Maryland.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland

GARY E. BAIR*
Solicitor General

Counsel for Petitioner

**Counsel of Record*

November 22, 2002

APPENDIX

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APPENDIX A:

Reported opinion of the Court of Appeals of Maryland, filed August 27, 2002, *Joseph Jermaine Pringle v. State of Maryland*, 370 Md. 525, 805 A.2d 1016 (2002) 1a

APPENDIX B:

Reported opinion of the Court of Special Appeals of Maryland, filed November 28, 2001, *Joseph Jermaine Pringle v. State of Maryland*, 141 Md. App. 292, 785 A.2d 790 (2001) 50a

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APPENDIX A

Court of Appeals of Maryland.

Joseph Jermaine PRINGLE,
v.
STATE of Maryland.

No. 129, Sept. Term, 2001.

Aug. 27, 2002.

Argued before BELL, C.J., ELDRIDGE, RAKER, WILNER, CATHELL, HARRELL and BATTAGLIA, JJ.

CATHELL, J.

On April 11, 2000, Joseph Jermaine Pringle, petitioner, was convicted by a jury in the Circuit Court for Baltimore County of possession with intent to distribute cocaine and possession of cocaine. On May 9, 2000, petitioner was sentenced to a term of ten years incarceration without the possibility of parole.[1]

Petitioner appealed this conviction to the Court of Special Appeals. On appeal, petitioner asserted, *inter alia*, that there was no probable cause to support his arrest

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[1] By order dated April 4, 2001, a three-judge panel of the Circuit Court for Baltimore County modified petitioner's sentence. The effect of the modification was a change in petitioner's no-parole sentence to a ten-year sentence with the possibility of parole.

which led to his conviction. On November 28, 2001, the intermediate appellate court held that there was probable cause to arrest petitioner and affirmed his conviction. *Pringle v. State*, 141 Md.App. 292, 785 A.2d 790 (2001).

On March 6, 2002, we granted petitioner's Petition for Writ of Certiorari. *Pringle v. State*, 368 Md. 239, 792 A.2d 1177 (2002). Petitioner presents one question for our review:

> "Did the police have probable cause to arrest the petitioner where he was a front seat passenger in a vehicle also occupied by the driver/owner and a rear seat passenger, and in which a sum of money was found inside the closed glove compartment and a quantity of drugs was found hidden behind a rear armrest, and where there was neither the odor of drugs within the vehicle nor any other indicia of drug activity?"

We reverse. We hold that there was not probable cause to support the arrest of the petitioner in the car when he had not admitted ownership of the drugs. Specifically, we hold that there was not probable cause to arrest petitioner, who was not the owner of the vehicle, when petitioner was merely the front seat passenger and the only evidence supporting the arrest was a sum of money in the closed front glove compartment and drugs that were hidden from view in the armrest in the backseat of the vehicle.

I. Facts

Officer Jeffrey Snyder of the Baltimore County Police Department testified that at 3:16 a.m. on the morning of August 7, 1999, on his routine patrol in the Reisterstown/Garrison area of Baltimore County, he

conducted a traffic stop. Officer Snyder asked the driver for his license and registration. The driver/registered owner of the car was Donte Carlos Partlow (Partlow). Also in the vehicle were petitioner, the front seat passenger, and Otis Calvin Smith (Smith), the back seat passenger.

When Partlow opened the glove compartment for the vehicle registration, Officer Snyder saw a large amount of rolled up money in the glove compartment. At this time, Officer Snyder did not ask about the money, but went back to his patrol car with Partlow's license and registration to check the Maryland Motor Vehicle Administration computer system for outstanding violations. The computer check did not reveal any violations and Officer Snyder returned to the car, had Partlow exit the vehicle, and issued him an oral warning.

At this time, a second patrol car arrived and Officer Snyder then "asked him [Partlow] if he had anything in the vehicle, any drugs, weapons, narcotics in the vehicle?" Partlow responded that he did not. Officer Snyder then asked for and received permission from Partlow to search the vehicle. Prior to doing so, Officer Snyder asked the other two men in the vehicle, petitioner and Smith, to exit the vehicle and he patted them down. All three men were asked to sit on the curb while he searched the vehicle.

During the search, Officer Snyder seized $763.00 from the glove compartment and five plastic glassine baggies containing suspected cocaine from inside an armrest in the backseat.[2] Officer Snyder questioned all three men about

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[2] The armrest in the backseat was the type that goes up and down. At the time of the stop, the armrest was in the

the ownership of the drugs and money, and told the three men that if no one admitted to ownership of the drugs he was going to arrest them all. None of the men offered any information regarding the ownership of the drugs and/or money, and all three were placed under arrest and transported to the police station.

Sometime between 4:00 and 5:00 a.m., Officer Snyder met with petitioner and, following a waiver of his Miranda rights,[3] obtained an oral and written confession in which petitioner acknowledged that the cocaine belonged to him, that he and his friends were going to a party in Westminster, and that he intended to sell it or "Use it for sex." Petitioner maintained that neither Partlow nor Smith knew of the drugs. Partlow and Smith were released.

At trial, during a suppression hearing,[4] petitioner's counsel argued that petitioners's arrest was unlawful

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upright position and flat against the seat. When Officer Snyder pulled down the armrest he found the drugs, which had been placed between the armrest and the back seat of the car and, absent the pulling down of the armrest, were not visible.

[3] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

[4] It is not altogether clear whether the suppression issue was addressed during the trial itself when the admission into evidence of the confession was sought, or at a separate suppression hearing, or both. Petitioner's brief states "at the hearing on the motion to suppress...." Respondent did not challenge that statement.

because it was not supported by probable cause and that his confession should be suppressed as the unlawful fruit of an illegal arrest. The trial court judge agreed with the State that Officer Snyder "had probable cause to make the arrest." After a jury trial, petitioner was found guilty and sentenced to ten years incarceration without the possibility of parole.[5] The Court of Special Appeals affirmed the conviction.

II. Discussion

a. Probable Cause

In the case *sub judice,* petitioner is not contending that the vehicle was stopped, or that the vehicle was searched, in violation of the Fourth Amendment's[6] guarantee against unreasonable searches and seizures. Petitioner's only contention is that the police officer did not have probable cause to arrest him; therefore, his confession was the fruit

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[5] As stated, *supra*, petitioner's sentence was modified to a ten-year sentence with the possibility of parole.

[6] The Fourth Amendment of the United States Constitution states:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

of an illegal arrest.

In order for a warrantless arrest to be legal it must be based upon probable cause. We have held that a police officer can arrest an accused without a warrant if the officer has probable cause to believe that a felony has been or is being committed by an alleged offender in the officer's presence. *Woods v. State*, 315 Md. 591, 611-12, 556 A.2d 236, 246 (1989); *Nilson v. State*, 272 Md. 179, 184, 321 A.2d 301, 304 (1974). Maryland Code (1957, 1996 Repl.Vol.), Article 27, section 594B, then stated, in relevant part:[7]

> "**§ 594B. Arrests without warrants generally.**
>
> (a) *Arrest for crime committed in presence of officer*.--A police officer may arrest without a warrant any person who commits, or attempts to commit, any felony or misdemeanor in the presence of, or within the view of, such officer.
>
> (b) *Arrest for crime apparently committed in presence of officer*.--A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the officer's presence or within the officer's view, may arrest without a warrant any person whom the officer may reasonably believe to have committed such offense.
>
> (c) *Arrest for crime committed generally*.--A police officer may arrest a person without a warrant if the officer has probable cause to believe that a felony has

[7] Article 27, section 594B was repealed by Acts of 2001, Chapter 10, section 1, effective October 1, 2001. Present provisions in respect to arrest generally are found in Title 2 and Subtitle 2 of the Criminal Procedure Article.

> been committed or attempted and that such person has committed or attempted to commit a felony whether or not in the officer's presence or view."

We examined the application of probable cause to a warrantless arrest in *Collins v. State*, 322 Md. 675, 589 A.2d 479 (1991), when we stated:

> "Probable cause, we have frequently stated, is a nontechnical conception of a reasonable ground for belief of guilt. *Doering v. State*, 313 Md. 384, 403, 545 A.2d 1281 (1988); *Edwardsen v. State*, 243 Md. 131, 136, 220 A.2d 547 (1966). A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion. *Woods, supra*, 315 Md. at 611, 556 A.2d 236; *Sterling v. State*, 248 Md. 240, 245, 235 A.2d 711 (1967); *Edwardsen, supra*, 243 Md. at 136, 220 A.2d 547. Our determination of whether probable cause exists requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation in light of the facts found to be credible by the trial judge. *State v. Lemmon*, 318 Md. 365, 379, 568 A.2d 48 (1990); *Doering, supra*, 313 Md. at 403-04, 545 A.2d 1281. Probable cause exists where the facts and circumstances taken as a whole would lead a reasonably cautious person to believe that a felony had been or is being committed by the person arrested. *Woods, supra*, 315 Md. at 611, 556 A.2d 236; *Stevenson v. State*, 287 Md. 504, 521, 413 A.2d 1340 (1980); *Duffy v. State*, 243 Md. 425, 432, 221 A.2d 653 (1966). Therefore, to justify a warrantless arrest the police must point to specific and articulable facts which, taken together with rational inferences

from those facts, reasonably warranted the intrusion.

Lemmon, supra, 318 Md. at 380, 568 A.2d 48."

Id. at 680, 589 A.2d at 481. To determine whether an officer had probable cause in a specific case, "the reviewing court necessarily must relate the information known to the officer to the elements of the offense that the officer believed was being or had been committed." *DiPino v. Davis*, 354 Md. 18, 32, 729 A.2d 354, 361 (1999).

Petitioner was charged and eventually convicted of violating sections 286--possession of cocaine with intent to distribute--and 287--possession of cocaine.[8] In order for petitioner's arrest to be valid, the officer must have had probable cause at the time of the arrest to believe that petitioner was in possession of cocaine. Possession is defined in Maryland Code (1957, 1996 Repl.Vol., 2001 Supp.), Article 27, section 277(s) as "the exercise of actual or constructive dominion or control over a thing by one or more persons ." This statute recognizes, as we have held, that possession may be constructive or actual, exclusive or joint. *State v. Leach*, 296 Md. 591, 596, 463 A.2d 872, 874 (1983).

While the quantum of evidence is different, we have discussed possession issues in several sufficiency of the evidence cases, which are instructive in respect to the definition of possession. In *Garrison v. State*, 272 Md. 123, 321 A.2d 767 (1974), we examined the meaning of

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[8] Maryland Code (1957, 1996 Repl.Vol., 2001 Supp.), Art. 27 §§ 286 and 287.

"possession" in reference to section 287 of Article 27.[9] Although we said that the State was not required to show knowledge by the defendant,[10] we found that in order for the State to establish possession it must establish evidence that "must show directly or support a rational inference that the accused did in fact exercise some dominion or control over the prohibited narcotic drug in the sense contemplated by the statute, *i.e.*, that she exercised some restraining or directing influence over it." *Id.* at 142, 321 A.2d at 777. We held that the State had not met the standard of legal sufficiency because there was no

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[9] We note that *Garrison* was concerned with the sufficiency of the evidence at trial. In examining probable cause for an arrest, we have stated that "[t]he rule of probable cause is a non-technical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion." *Doering v. State*, 313 Md. 384, 403, 545 A.2d 1281, 1290 (1988). While the State is required to provide more evidence at trial for conviction than for a probable cause showing in respect to arrest at a motion's hearing, the elements of an offense are the same whether a police officer is making a probable cause determination prior to an arrest or whether the State is trying to prove the elements at trial to establish the guilt of a defendant.

[10] This was later overruled by *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988) in which we held that the State must prove that the defendant had knowledge of the controlled dangerous substance to prove possession.

evidence which directly or inferentially demonstrated that the defendant had exercised actual or constructive dominion or control, solely or jointly, over the narcotics.

In *State v. Leach*, 296 Md. 591, 463 A.2d 872 (1983), Stephen Leach and his brother, Michael Leach, were convicted of possession of a controlled dangerous substance. On appeal, Stephen Leach challenged the sufficiency of the evidence in his conviction for possession. The essential question was whether Stephen constructively possessed drugs and drug paraphernalia found in Michael's apartment at 3712 Erdman Avenue in Baltimore City. Prior to their arrest, Stephen and Michael had been the objects of ongoing police surveillance. Stephen had been seen entering and leaving the premises at 3712 Erdman Avenue. Relying on information from an informant, the police obtained a search warrant for 3712 Erdman Avenue. On February 27, 1980, the police arrested Michael outside of the premises and then searched the one-bedroom apartment. In the bedroom, police found drugs and drug paraphernalia. Also found in the apartment were an electric bill and a telephone bill, both in Michael's name. A 30-X magnifier and a large table scale were located on the kitchen table. The police then proceeded to the 4000 block of Poursė Avenue, where they arrested Stephen while he was walking a dog. Stephen gave his address as 3712 Erdman Avenue at booking and before a Commissioner. The Department of Motor Vehicles had 3712 Erdman Avenue as Stephen's address but his employer had two addresses for Stephen, 3712 Erdman Avenue and 4002 Pourse Avenue. Rita Cushner testified that Stephen lived at 4002 Pourse Avenue with her and her daughter from a few weeks before Thanksgiving in 1979 until late May of 1980.

Finding that the evidence against Stephen was insufficient to establish that he exercised dominion or control over the narcotics, we stated:

> "Here the fact finding that Michael was the occupant of the Premises precludes inferring that Stephen had joint dominion and control with Michael over the entire apartment and over everything contained anywhere in it. Even though Stephen had ready access to the apartment, it cannot be reasonably inferred that he exercised restraining or directing influence over PCP in a closed container on the bedroom dresser or over paraphernalia in the bedroom closet. If one assumes that the scales and magnifier found in plain view in the kitchen at the time of the search were always kept there, still those items are intrinsically innocuous. They become significant by association with drugs or cutting agents."

Id. at 596, 463 A.2d at 874. We held that the evidence was legally insufficient to convict Stephen.

In *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988), Leonard Dawkins was arrested in a hotel room and charged with possession of heroin and possession of controlled paraphernalia. At trial, after the presentation of evidence, the court instructed the jury on the elements of possession. Dawkins requested that the court instruct the jury that knowledge is an element of possession; the court declined. We reversed, holding that knowledge is an element of possession. Judge Eldridge, writing for the Court, stated:

> "Under the Maryland statute, § 277(s) defines 'possession' as 'the exercise of actual or constructive *dominion or control* over a thing by one or more

persons.' (Emphasis added). Some courts, in analyzing similar language, construe 'dominion and control' to require 'knowledge.' For example, in *State v. Burns*, 457 S.W.2d 721 (Mo.1970), the Missouri Supreme Court determined that 'possession' included a knowledge element. It reasoned that in order to 'control' an object, the defendant must know of its existence. The court stated: 'Knowledge of the existence of the object is essential to physical control thereof with the intent to exercise such control and such knowledge must necessarily precede the intent to exercise or the exercise of such control.' 457 S.W.2d at 724.

"We find persuasive the reasoning of the above-reviewed cases. In particular, we agree that an individual ordinarily would not be deemed to exercise 'dominion or control' over an object about which he is unaware. Knowledge of the presence of an object is normally a prerequisite to exercising dominion and control."

Id. at 648-49, 547 A.2d at 1046 (footnote omitted).

Therefore, in order to prove "possession," the State must prove the elements of "dominion or control" and "knowledge." These elements were applied in two other, more recent, sufficiency of the evidence cases, *White v. State*, 363 Md. 150, 767 A.2d 855 (2001) and *Taylor v. State*, 346 Md. 452, 697 A.2d 462 (1997). In *White*, Sean White was a passenger in a vehicle that was stopped by a Maryland State trooper for a traffic offense. After conducting a pat-down of the driver, on whom the state trooper discovered marijuana, the state trooper searched the vehicle. In the trunk of the vehicle, in a sealed box containing pots and pans, the state trooper discovered 194

grams of cocaine. Both the driver/owner of the vehicle and White were arrested at that time. Among other charges, White was charged with possession of cocaine and possession of cocaine with intent to distribute. White was convicted and his conviction was affirmed by the Court of Special Appeals.

Before this Court, White contended that there was not sufficient evidence to support his conviction for possession of the cocaine found in the box of pots and pans located in the trunk. Writing for the Court, Judge Harrell stated:

"There is a substantial question whether the evidence in this case establishes beyond a reasonable doubt that Petitioner [White] had knowledge of the presence of the cocaine hidden in a sealed box of pots and pans found inside the trunk of Charity's vehicle. Although Petitioner, by virtue of being a passenger in Charity's vehicle, was in close proximity to the cocaine, on this record *he did not have a possessory right in, or control over, the vehicle.* Additionally, Charity's behavior, when contrasted with Petitioner's, is distinguishable. Charity, who arguably knew that 194 grams of cocaine were in the trunk of his automobile, was so nervous that Lewis [the state trooper] claimed he could see Charity's carotid artery pulsing in his neck and his heart pounding through his shirt. No such dramatic observations, however, were attributed to Petitioner, who claims ignorance as to the existence of the contraband. Although Lewis did state that Petitioner would not look at him during questioning, his compatriot, Corporal Bromwell, noted nothing unusual about Petitioner's behavior, and testified that

Petitioner remained quiet or engaged in small talk while Lewis searched Charity's vehicle.

"Assuming *arguendo* that there was evidence in the record sufficient to establish beyond a reasonable doubt the knowledge requirement for possession, we conclude nonetheless that there was not sufficient evidence establishing that Petitioner exercised dominion and control over the cocaine....

. . .

"After reviewing the record in White's case in a light most favorable to the State, we hold the circumstantial evidence upon which the State's case rested was insufficient as a matter of law to support, beyond a reasonable doubt, that Petitioner exercised dominion or control over the cocaine found inside the pots and pans box in the trunk of Charity's automobile. If the rational fact finder was not permitted to infer reasonably in *Leach [supra*] that Stephen exercised dominion and control over the PCP found in a closed container on a bedroom dresser in an apartment to which he had ready access, than *a rational fact finder may not infer in the present case that Petitioner had dominion and control over the cocaine found in a sealed box in the trunk of a vehicle in which he apparently had limited access and no possessory interest.* Having no such interest in the vehicle places Petitioner in a somewhat similar situation to that of the defendant in *Livingston [v. State*, 317 Md. 408, 564 A.2d 414 (1989)], for the mere existence of cocaine located in the trunk of Charity's vehicle was not sufficient to prove that Petitioner, a front seat passenger, exercised dominion and control over the contraband. Although Lewis's

testimony regarding the air fresheners and the co-defendants's inconsistent stories might form the basis for a strong suspicion as to Petitioner's culpability, the evidence, and reasonable inferences drawn therefrom, does not reach the standard of guilt beyond a reasonable doubt. Without more, we hold that the Petitioner's convictions for importation of cocaine, possession of cocaine, and possession of cocaine with the intent to distribute cannot stand."

White, 363 Md. at 164-67, 767 A.2d at 863-64 (footnote omitted) (some emphasis added).

In *Taylor*, the Ocean City police entered a motel room after receiving a complaint about a possible controlled dangerous substance violation. Upon entering the room, Richard Taylor, petitioner before this Court, was lying on the floor with his face away from the door.[11] The police received permission to search the room for "dope," and the police discovered a bag of marijuana in two different bags, neither belonging to Taylor, and rolling papers in the wallet of one of the other occupants of the room. Taylor was charged with possession of marijuana and he was convicted.

After reviewing the sufficiency of the evidence, we held that the evidence was insufficient to establish possession. Judge Raker, writing for the Court, stated:

"We agree with Taylor that, under the facts of this case, any finding that he was in possession of the marijuana could be based on no more than speculation or conjecture. The State conceded at trial

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[11] The police testified that they did not know whether Taylor was sleeping or awake.

that no marijuana or paraphernalia was found on Petitioner or in his personal belongings, nor did the officers observe Petitioner or any of the other occupants of the hotel room smoking marijuana. Viewing the evidence in the light most favorable to the State, Officer Bernal's testimony established only that Taylor was present in a room where marijuana had been smoked recently, that he was aware that it had been smoked, and that Taylor was in proximity to contraband that was concealed in a container belonging to another.

"The record is clear that Petitioner was not in exclusive possession of the premises, and that the contraband was secreted in a hidden place not otherwise shown to be within Petitioner's control.... Possession requires more than being in the presence of other persons having possession; it requires the exercise of dominion or control over the thing allegedly possessed....

"... The evidence in this case does not establish that Taylor had knowledge of the presence of the marijuana concealed in Myers's carrying bags.

"As clearly indicated by *Dawkins*, without knowledge of the presence of marijuana in the room, it is not possible for Petitioner to have exercised dominion or control over the marijuana, another required ingredient of the crime of possession. The facts and circumstances, considered in the light most favorable to the State, do not justify any reasonable inference that Petitioner had the ability to exercise, or in fact did exercise dominion or control over the contraband found in the room. Although the evidence in this case might form the basis for a strong suspicion of

Petitioner's guilt, suspicion is insufficient to support a conviction. '[M]ere proximity to the drug, mere presence on the property where it is located, or mere association, without more, with the person who does control the drug or property on which it is found, is insufficient to support a finding of possession.' *Murray v. United States*, 403 F.2d 694, 696 (9th Cir.1969) (internal quotation marks and citations omitted). In other words, there must be additional proof of knowledge and control to sustain a conviction for possession.

. . .

"In sum, the evidence presented in this case was insufficient to establish that Taylor was in possession of the marijuana seized from Myers's carrying bags. Taylor's presence in a room in which marijuana had been smoked, and his awareness that marijuana had been smoked, cannot permit a rational trier of fact to infer that Taylor exercised a restraining or directing influence over marijuana that was concealed in personal carrying bags of another occupant of the room. Because Petitioner was in joint rather than exclusive possession of the hotel room, his mere proximity to the contraband found concealed in a travel bag and his presence in a room containing marijuana smoke were insufficient to convict him."

Taylor, 346 Md. at 459-63, 697 A.2d at 465-68 (footnote omitted) (alteration in original).

While the cases we have discussed above involve the sufficiency of the evidence, they, nonetheless, establish the law for determining some possession issues, even at the probable cause to arrest stage. Moreover, we have also had occasion to apply the elements of possession to cases,

like the case at bar, where the probable cause to make an arrest for possession is being challenged. In *Livingston v. State*, 317 Md. 408, 564 A.2d 414 (1989), Wesley Livingston was one of three people in a vehicle that was stopped for speeding. Livingston, who was not the owner of the vehicle, was sitting in the backseat. During the stop for speeding, the state trooper saw two marijuana seeds on the floor of the front passenger's side. The state trooper arrested all three occupants of the car and upon searching Livingston pursuant to the arrest, the state trooper discovered cocaine and marijuana in Livingston's pocket. Livingston was charged with possession of cocaine with intent to distribute, possession of cocaine, and possession of marijuana. He moved to suppress the evidence as the product of an illegal arrest but the motion was denied by the trial court. Livingston was convicted on all three counts and he appealed.

While we found that the two marijuana seeds on the floor provided the state trooper with probable cause that a misdemeanor was being committed in his presence, the question became who could the state trooper arrest for the offense. We held that the two marijuana seeds on the floor in the front of the vehicle did not provide the state trooper with probable cause to arrest Livingston and then conduct a search incident to that arrest. We stated:

> "Merely sitting in the backseat of the vehicle, Livingston did not demonstrate to the officer that he possessed any knowledge of, and hence, any restraining or directing influence over two marijuana seeds located on the floor in the front of the car.
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> "Without more than the mere existence of two marijuana seeds located in the front of the car, we hold that the police officer lacked probable cause to arrest Livingston, a rear seat passenger, for possession of marijuana. Thus, Livingston's arrest was illegal, and the contraband seized in the search arising out of that arrest must be suppressed."

Id. at 415-16, 564 A.2d at 418 (footnote omitted).

We further examined when a police officer has probable cause to make a warrantless arrest in *Collins v. State*, 322 Md. 675, 589 A.2d 479 (1991). On September 20, 1988, at 3:00 a.m., Officer Holmes of the Salisbury Police Department noticed five men standing about five feet from a Mustang that was parked in the entrance to a car dealership. The Mustang was not owned by Collins. Officer Holmes approached the men and asked what they were doing. The driver of the Mustang, Steven Lewis, stated that they were looking at the BMWs. Officer Ewing arrived on the scene to assist Officer Holmes. Officer Ewing saw a 35 mm film canister on the rear seat of the Mustang and he asked one of the men to retrieve the canister for him. Inside the canister, Officer Ewing found over twenty cellophane wrapped packets containing cocaine. Officers Ewing and Holmes then arrested all five men for possession of cocaine. Collins alleged at a suppression hearing that there was not probable cause for his arrest. The trial court denied his suppression motion and Collins was convicted of possession of cocaine.

Before this Court, Collins once again asserted that there was not probable cause for his arrest. Specifically, relying on *Livingston, supra*, he asserted that his mere proximity to incriminating evidence, or to an offender, is not enough for a finding of probable cause for arrest. Furthermore, Collins asserted that there was no further factual basis to connect him to the drugs or to having committed any crime. We first discussed the United States Supreme

Court case of *United States v. Di Re*, 332 U.S. 581, 68 S.Ct. 222, 92 L.Ed. 210 (1948), in which the Supreme Court had examined the arrest of Di Re, who was seated in the passenger seat of a vehicle from which an informant had purchased counterfeit gasoline ration coupons from the driver and the backseat passenger was seen holding gasoline ration coupons. The police arrested and searched all three men. The Supreme Court held that Di Re's mere presence in a vehicle involved in criminal activity, without more, did not cause him to lose his right to be free from a search of his person. We then discussed our holding in *Livingston, supra*, and we held that there was not probable cause to arrest Collins for possession. We stated:

> "Considering the totality of the circumstances, we conclude that the mere presence of a closed film canister in a car found to contain cocaine was legally insufficient to support the requisite probable cause to arrest Collins as he stood outside of the vehicle. No testimony suggested that he arrived at the lot in the car, that he had even been in the vehicle, or that he knew the suspected cocaine was in the back seat of the car. Even if the police had probable cause to arrest Lewis or Parker for unlawful possession, there was no probable cause to arrest Collins. As there was no evidence which criminally linked Collins to either the car, or to the film canister, there was no probable cause to believe that he committed or attempted to commit a felony as required by Art. 27, § 594B."

Collins, 322 Md. at 682-83, 589 A.2d at 482.

As stated, *supra*, to determine whether a police officer had probable cause to make a warrantless arrest, we evaluate the totality of the circumstances as to whether the facts and circumstances, with rational inferences derived

therefrom, would lead a reasonable person to believe that a felony has been or is being committed. In a specific case, we apply the elements of the alleged offense to the facts and circumstances of that case to determine whether the police officer had probable cause to make a warrantless arrest of a particular individual for that specific offense.

In the case *sub judice*, applying the facts and circumstances of this case to the elements of possession requiring "knowledge" of the controlled dangerous substance and "dominion or control" over the substance, and relying on the holdings of our previous cases, specifically our holding in *Livingston,* we find that the police did not have probable cause to arrest petitioner. Similar to the situation in *Livingston*, where the defendant was sitting in the backseat and two marijuana seeds were in open view on the floor in the front seat, petitioner in this case was sitting in the front seat and the cocaine was found hidden from view in the armrest in the back seat of the car. Without additional facts available to the officer at that time that would tend to establish petitioner's knowledge and dominion or control over the drugs, the mere finding of cocaine in the back armrest when petitioner was a front seat passenger in a car being driven by its owner is insufficient to establish probable cause for an arrest for possession.[12] As we stated in *Livingston*:

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[12] Under respondent's reasoning, if contraband was found in a twelve-passenger van, or perhaps a bus or other kind of vehicle, or even a place, *i.e.*, movie theater, the police would be permitted to place everyone in such a vehicle or place under arrest until some person confessed

> "Merely sitting in the backseat of the vehicle, Livingston did not demonstrate to the officer that he possessed any knowledge of, and hence, any restraining or directing influence over two marijuana seeds located on the floor in the front of the car.
>
> "Without more than the mere existence of two marijuana seeds located in the front of the car, we hold that the police officer lacked probable cause to arrest Livingston, a rear seat passenger, for possession of marijuana."

Livingston, 317 Md. at 415-16, 564 A.2d at 418 (footnote omitted).

The State points to the additional fact that the police officer saw a large amount of rolled up money in the glove compartment located in front of petitioner. Money, without more, is innocuous. In *Leach*, we held that there was insufficient evidence to convict Stephen Leach, the brother of Michael Leach, when the drugs were found in Michael Leach's bedroom. In that case, the police had also discovered a large table scale and a magnifier in plain view on the kitchen table. We held that the table scale and magnifier were intrinsically innocuous and that they only became significant when associated with drugs. The money in the case at bar was not in the plain view of the police officer or petitioner; rather it was located in a closed glove compartment and only came into view when the glove compartment was opened by the car's owner/driver in response to the officer's request for the car's

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to being in possession of the contraband. Simply stated, a policy of arresting everyone until somebody confesses is constitutionally unacceptable.

registration. There are insufficient facts that would lead a reasonable person to believe that petitioner, at the time of his arrest, had prior knowledge of the money or had exercised any dominion or control over it. We hold that a police officer's discovery of money in a closed glove compartment and cocaine concealed behind the rear armrest of a car is insufficient to establish probable cause for an arrest of a front seat passenger, who is not the owner or person in control of the vehicle, for possession of the cocaine.

As noted, *supra*, we hold that there was not probable cause to arrest petitioner at the time of the routine traffic stop. Under the "fruit of the poisonous tree doctrine,"[13] evidence tainted by Fourth Amendment violations may not be used directly or indirectly against the accused. *See Miles v. State*, 365 Md. 488, 781 A.2d 787 (2001). The exclusionary rule "applies to any 'fruits' of a constitutional violation-- whether such evidence be tangible ... or confessions or statements of the accused obtained during an illegal arrest and detention." *United States v. Crews*, 445 U.S. 463, 470, 100 S.Ct. 1244, 1249, 63 L.Ed.2d 537, 545 (1980) (footnote omitted).

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[13] The "fruit of the poisonous tree" doctrine is an aspect of the exclusionary rule, a judicially imposed sanction for violations of the Fourth Amendment right against improper arrests and unreasonable searches and seizures in prosecutions, and requires courts to suppress evidence that is the product of unlawful governmental activity. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); *Ferguson v. State*, 301 Md. 542, 483 A.2d 1255 (1984).

b. Attenuation

The State has not argued that the confession was admissible as a result of attenuation. We do not believe that the parties have properly presented that issue to this Court. Even if properly presented, the concept would not be applicable under the circumstances here present.

In that respect, we turn now to whether, if attenuation had been properly presented, the taint of the illegal arrest was sufficiently attenuated to permit the admission into evidence of petitioner's confession, which would otherwise be barred as the fruit of a poisonous tree because the arrest was effectuated without probable cause. *See Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

In her dissenting opinion in *Miles*, Judge Raker, examining the attenuation doctrine, stated:

> "It is black letter law that once a defendant has demonstrated the existence of a primary illegality[14] ... the burden shifts to the government to prove that the resulting evidence was not derived from that illegality....
>
> "The government can demonstrate that the taint of the primary illegality has been purged in three ways: (1) by demonstrating that the causal nexus between the illegality and the subsequently discovered evidence is sufficiently attenuated so that the taint has been dissipated, *see Wong Sun*, 371 U.S. at 487-88, 83

[14] In the case at bar, the warrantless arrest was effectuated without probable cause.

> S.Ct. at 417, 9 L.Ed.2d 441, (2) by demonstrating that the subsequently discovered evidence was obtained from a source independent of the primary illegality, *see United States v. Wade*, 388 U.S. 218, 242, 87 S.Ct. 1926, 1940, 18 L.Ed.2d 1149 (1967); or (3) by demonstrating that, absent the illegality, the State still inevitably would have discovered the later evidence. *See Nix v. Williams*, 467 U.S. 431, 444, 104 S.Ct. 2501, 2509, 81 L.Ed.2d 377 (1984)....[15]
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> "In examining the *Wong Sun* attenuation doctrine, courts repeatedly utilize consequential language, such as 'exploitation,' 'direct result,' 'chain of events,' 'link,' 'nexus,' 'impetus,' 'connection,' 'causation,' 'inducement,' 'basis,' and 'product' to describe the necessary relationship between a primary illegality and evidence derived therefrom. In assessing attenuation, courts examine the facts and circumstances of each case in considering four factors: the giving of *Miranda* warnings; the temporal proximity of the illegality to the confession; the presence of intervening circumstances; and the purpose and flagrancy of the illegal police conduct. *See Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S.Ct.

[15] The doctrines of independent source and inevitable discovery, two additional ways for the government to demonstrate that the taint of the primary illegality has been purged, have not been raised in this case.

2254, 2261-62, 45 L.Ed.2d 416 (1975)."[16]
Miles, 365 Md. at 575-78, 781 A.2d at 837-39 (some citations omitted) (footnote omitted). In the case sub judice, we hold that there was no attenuation between petitioner's arrest and his confession that would sufficiently purge the taint of the illegal arrest.

The giving of the *Miranda* warnings, the first of the *Brown* factors, does not, alone, attenuate the taint of an illegal arrest.[17] Nor does the *Brown* temporal proximity attenuator provide a clear-cut test for determining at what point the taint has been purged by the lapse of time. In *Ferguson v. State*, 301 Md. at 550, 483 A.2d at 1259 (1984), this Court stated:

> "[T]he Supreme Court has understandably not articulated any mathematically precise test for determining at what point the taint has been purged by the lapse of time. Recent decisions, however, indicate that time spans ranging from two hours to six

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[16] We adopted the test for attenuation, as set forth in *Brown*, in *Ferguson v. State*, 301 Md. 542, 549, 483 A.2d 1255, 1258 (1984). In *Scott v. State*, 366 Md. 121, 149, 782 A.2d 862, 878 (2001), we stated that, "No one factor is dispositive ."

[17] In *Brown*, 422 U.S. at 603, 95 S.Ct. at 2261, 45 L.Ed.2d at 427, the Supreme Court held the receiving of *Miranda* warnings to be an important factor in assessing the voluntariness of a confession, but also stated that a defendant's waiver of *Miranda* rights alone to be insufficient to purge the taint of a defendant's illegal arrest.

> hours between an unlawful arrest and the challenged evidence constitute insufficient attenuation. Because a lengthy detention can be used to exploit an illegal arrest at least as easily as a brief detention, the temporal proximity factor has been labeled 'ambiguous' ...." [Citations omitted.]

In the case *sub judice*, even though petitioner was given and waived his *Miranda* rights prior to his confession, he, nonetheless, confessed in the station house just over two hours after the illegal arrest. As stated, *supra*, while the timing of the confession is not dispositive as to the issue of attenuation, the mere two-hour passage of time, during which petitioner remained in custody, does not establish attenuation. In this case, the traffic stop occurred at approximately 3:00 a.m., the arrest shortly thereafter, and the three men were transported to the station house. It was not long after the arrival at the station house, after his illegal arrest, that petitioner was placed in a room, questioned, and confessed. The time between the illegal arrest and the confession is the natural time that likely would have lapsed in such a situation. The fact that petitioner confessed approximately two hours after the police officer at the scene stated that he was going to arrest all three passengers unless one confessed to being in possession of the contraband, and then established that he meant what he said by arresting all of them, does not, as the majority for the Court of Special Appeals urges, "generat[e] an issue of attenuation." In this case, where the officer had initially established a coercive effect by stating that he was going to arrest all three unless one confessed and had indeed arrested all of them when there was no initial confession, this two-hour time span constitutes insufficient attenuation and the fact that

petitioner received and waived his *Miranda* warnings prior to his confession does not amount to attenuation. The coercion began alongside the highway at the point of arrest, and by its very nature continued to the point of the custodial confession.[18]

In these circumstances, there was no meaningful intervening circumstance, the next *Brown* factor to consider, that prompted petitioner to confess to the police.[19] Clearly, it was the officer's arrest of all three

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[18] When the officer stated that he was going to arrest all three unless one confessed, and then did so, the coercion continued, unbroken, from the point of the illegal arrest during the entire period when all three persons remained under arrest.

[19] "[A]n intervening circumstance is an event that breaks the causal connection between the unlawful conduct and the derivative evidence. Properly considered, the focus should more appropriately be on the accused to determine whether there was any event that contributed to his ability to consider carefully and objectively his options and to exercise his free will." *Ferguson*, 301 Md. at 551, 483 A.2d at 1259 (citing *Taylor v. Alabama*, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982)) (holding that six hours between the unlawful arrest and challenged evidence constituted insufficient attenuation and that there was no intervening circumstance present when the accused was visited by his girlfriend and a male companion after the unlawful arrest but before the confession). *But cf. Johnson v. Louisiana*, 406 U.S. 356, 92 S.Ct. 1620, 32 L.Ed.2d 152 (1972) (intervening circumstance was present when after

men, specifically petitioner's illegal arrest, that induced and directly led to petitioner's confession. The record shows that petitioner was arrested, transported, and questioned. The time it took to transport petitioner to the station house, and the time petitioner remained there prior to being questioned does not dissipate the taint of the illegal arrest or constitute an intervening circumstance. The circumstance, the arresting of all three persons and keeping them under arrest until one of them confessed, was a continuing coercive factor. There was never an intervening circumstance. Petitioner's confession flowed directly from the illegal arrest and, moreover, was made during the continuation of that illegal arrest and its coercive effect. There was no intervening event; there was, instead, a continuation of the illegal event.

The final factor under *Brown*, the purpose and flagrancy of the illegal police conduct, here the officer's arrest without probable cause and transportation of petitioner to the station house, further supports a lack of attenuation. "This factor effectuates the deterrence policy of the exclusionary rule by providing an incentive for police to engage in lawful conduct. Obvious examples of purposeful and flagrant conduct are dragnet operations and pretextual arrests." *Ferguson*, 301 Md. at 552, 483 A.2d at 1260 (citations omitted). In the case *sub judice*, the apparent purpose of arresting all three men was to exploit their situation by transporting them to the station house where, perhaps, one of the men would be prepared to

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an unlawful arrest but prior to a lineup identification, a magistrate committed the accused and conducted the lineup).

confess in order to clear the other persons arrested. That is, in fact, what occurred. Officer Snyder stated that he would arrest all three men unless someone confessed; he then arrested all three men, including petitioner, whom he had no probable cause to arrest, and exploited the situation, *i.e.*, holding all three men in custody to generate a confession. This final *Brown* factor argues against any attenuation in the case *sub judice*.

The purpose of the Fourth Amendment exclusionary rule is to deter unlawful police conduct[20] and that purpose would be violated if we were to allow law enforcement officers to effectuate an illegal arrest and admit into

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[20] In *Ferguson*, 301 Md. at 548, 483 A.2d at 1258, we discussed the deterrent effect of the exclusionary rule:

> "This standard reflects a deterrence-based policy, which is '[t]he core rationale consistently advanced ... for extending the Exclusionary Rule to evidence that is the fruit of unlawful police conduct....' *Nix v. Williams*, 468 U.S.[431, 442], 104 S.Ct. 2501, 2508-09, 81 L.Ed.2d 377, 386-87 (1984). Despite the high societal costs in allowing persons obviously guilty to go unpunished for their crimes ... the Court in *Wong Sun* reasoned that suppression was the appropriate remedy so as to deter police from exploiting their illegal conduct." [Citations omitted.] [Alteration in original.]

See also United States v. Calandra, 414 U.S. 338, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *Elkins v. United States*, 364 U.S. 206, 80 S.Ct. 1437, 4 L.Ed.2d 1669 (1960).

evidence a confession from the person illegally arrested. "Maryland law demands that confessions 'be shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary.'" *Reynolds v. State*, 327 Md. 494, 504, 610 A.2d 782, 786 (1992) (quoting *Hillard v. State*, 286 Md. 145, 150, 406 A.2d 415, 418 (1979)). Emphasizing the deterrent purposes of the exclusionary rule further supports another *Brown* factor, discussed in a subsequent Supreme Court case, and our holding that unlawful police conduct, like the conduct in the case *sub judice*, should not be rewarded by admitting evidence derived from that improper police conduct.

In *Miles, supra,* Judge Battaglia, writing for this Court noted that, "The United States Supreme Court further refined its analysis of the attenuation doctrine set forth in *Brown v. Illinois*, to include an exploration of voluntariness. *See United States v. Ceccolini*, 435 U.S. 268, 276-77, 98 S.Ct. 1054, 1060, 55 L.Ed.2d 268, 277 (1978)."[21] *Miles*, 365 Md. at 523, 781 A.2d at 807. The

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[21] *Ceccolini*, which involved the voluntary aspect of a witness's testimony as a break in the chain of taint flowing from the unlawful conduct stands for the proposition that a person's action in providing evidence or testimony should be considered as an intervening factor under the attenuation doctrine because a person has the "attributes of will, perception, memory and volition." *Ceccolini*, 435 U.S. at 277, 98 S.Ct. at 1060, 55 L.Ed.2d at 277 (quoting *Smith v. United States*, 324 F.2d 879, 881 (D.C.Cir.1963)). Thus, we consider, along with the *Brown* factors, the voluntariness of petitioner's confession.

Court of Special Appeals found petitioner's confession to be voluntary because he waived his *Miranda* rights and then made a written and oral confession more than two hours after the police officer stated that if none of the three men claimed ownership of the drugs and/or money he was going to arrest all of them, and then did so. The intermediate appellate court found petitioner's statement to be voluntary under Maryland law, the Due Process Clause of the Fourteenth Amendment of the United States Constitution, and Article 22 of the Maryland Declaration of Rights, and held that the police officer's statement that "you are all going to get arrested" did not amount to an inducement for petitioner's subsequent confession. Furthermore, the Court of Special Appeals concluded that, "Appellant's transfer from the crime scene to the police station also disrupted the nexus between the alleged inducement and confession," and that the time lapse between the arrest and the confession show that there was attenuation and voluntariness on the part of petitioner to confess. We disagree.

Petitioner's confession was, to reiterate, the product of his illegal arrest and the improper and continuing coercion arising from that illegal arrest that existed up until the point of the confession. Any element of voluntariness evidenced by petitioner's waiver of his *Miranda* rights and subsequent confession does not, ultimately, dissipate the taint of the illegal arrest and the continuing improper coercion. The temporal proximity of the illegal arrest, along with the police officer's statement, which effect continued, does not attenuate, via the confession, the taint of the illegal arrest. In examining the facts and circumstances of this case under the *Brown* factors, petitioner's confession at such a proximate time to the

illegal arrest, and while the improper coercive influence continued, without more facts does not support attenuation and, therefore, the confession was the fruit of an illegal arrest.

III. Conclusion

In order for the warrantless arrest of petitioner for possession to be legal, there must be probable cause as applicable to the elements of the offense of possession. Looking at the totality of the circumstances, and after examining our case law, we conclude that there was not probable cause to arrest petitioner for possession.

The totality of the circumstances of the facts of this case, as interpreted under the *Brown* factors and the further consideration of voluntariness, clearly show that the necessary severing of the relationship between the primary illegality and the evidence derived therefrom to satisfy attenuation, even if the issue had been properly presented to this Court, does not exist. While petitioner was given his *Miranda* warnings, an application of the remaining *Brown* factors and a consideration of voluntariness, in light of the continuing inducement and the confession's proximity in time to the illegal arrest and the coercion, makes clear that the temporal proximity between the illegal arrest and the confession, the lack of intervening circumstances and the purposefulness of the illegal police conduct all indicate a direct causal nexus between the illegal arrest for lack of probable cause and petitioner's confession used by the State at trial.

Therefore, we hold that the arrest of petitioner was illegal and that there were insufficient facts and circumstances to prove petitioner's confession was

adequately attenuated from the point of his illegal arrest to the giving of the confession.

JUDGMENT REVERSED; COSTS IN THIS COURT AND IN THE COURT OF SPECIAL APPEALS TO BE PAID BY BALTIMORE COUNTY.

RAKER, J., concurring:

I concur in the Court's opinion and in the judgment. Like Judge Cathell, writing for the Court, and Judge Sonner, dissenting in the Court of Special Appeals, *Pringle v. State*, 141 Md.App. 292, 785 A.2d 790 (2001), I am convinced that the police lacked probable cause to arrest petitioner.[22] I write separately to express my view that the dissent misconstrues the rationale of the majority opinion.

Contrary to the repeated assertion by the dissent that the majority erroneously blends the probable cause standard with the sufficiency of evidence standard, the Court is well aware of the basic and elemental difference in the quantum of proof to support probable cause and that which is necessary to support a conviction. The majority reiterates and applies the well-recognized standard for probable cause: "A finding of probable cause requires less evidence than is necessary to sustain a conviction, but more evidence than would merely arouse suspicion." Maj. op. at

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[22] I agree also with the Court's conclusion that the confession was the product of an illegal arrest. *See Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S.Ct. 2254, 2261-62, 45 L.Ed.2d 416 (1975).

5-6 (quoting *Collins v. State*, 322 Md. 675, 680, 589 A.2d 479, 481 (1991)). Probable cause, a nontechnical common sense evaluation of the totality of the circumstances, nonetheless requires a reasonable ground for belief of guilt. In order to find probable cause for possession of a controlled dangerous substance, an arresting officer must have reasonable grounds to believe that a suspect knowingly exercised dominion or control over the substance. The majority merely looks to this Court's jurisprudence as guidance to elucidate the concept of possession and its discussion of dominion or control. The standard for probable cause, on the one hand, and sufficiency of the evidence, on the other, remains unchanged.

Apparently, proximity to concealed drugs is sufficient for the dissent to find probable cause to arrest. *See* Diss. op. at 2, 3 n. 3. Although it may be sufficient under certain circumstances, the discovery of three men riding in a car in the early morning hours, with some rolled money in a closed glove box and drugs hidden from view in a back arm rest, without more, hardly constitutes probable cause to arrest a front seat passenger who has no possessory interest in the automobile.

I cannot improve upon Judge Sonner's analysis in his dissent below:

> Mindful of *Garrison* and its progeny, I believe the majority has stopped far short of considering whether Pringle, in any way, knowingly exercised dominion or control over the secreted contraband, and has resorted instead to "speculation or conjecture." Although Pringle, like Folk, may have been within an arm's reach of the drugs, in fact, to expose the drugs, he would have had to stretch his body, maneuver

around the back of his seat, and pull down the arm rest. And unlike Folk, Pringle was not sitting in a closed car that emanated the pungent, easily detectable smell of marijuana, which were critical facts in Judge Moylan's analysis sustaining Folk's conviction thirty years ago. Although the majority [of the Court of Special Appeals] attaches some significance to the large roll of currency found in the glove compartment, located in front of Pringle's seat, cash, in and of itself, is innocuous and certainly less suspicious than the scales and cutting tools discounted by the Court of Appeals in *Leach*. Further, there was no showing whatsoever that Pringle, as a passenger in the car, had any connection to, or knowledge of, the money found within the glove compartment of someone else's car.

Pringle v. State, 141 Md.App. at 316, 785 A.2d at 804 (internal citations omitted).

BATTAGLIA, J. in which WILNER and HARRELL, JJ., join, dissenting.

I respectfully dissent.

The majority's holding that the police officers lacked probable cause to arrest the petitioner for possession of cocaine is based primarily upon an erroneous blending of the probable cause standard for an arrest and the sufficiency of evidence standard for a conviction. While the majority hastily acknowledges the differences between these standards, see maj. op. at fn. 9, it devotes most of its attention to citing and discussing legal authority for issues involving the standard of legal sufficiency and gives only

brief consideration to two (more applicable, albeit distinguishable) opinions concerning the requisite probable cause for a valid warrantless arrest. For these reasons, and the reasons articulated herein, I respectfully dissent.

Arrests without warrants are constitutionally and statutorily permitted pursuant to Article 27, Section 594B of the Maryland Code as long as the officer has probable cause to believe that a crime has been committed and the officer reasonably believes the arrestee committed that crime.[1] Determining whether probable cause exists to

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[1] Maryland Code (1957, 1996 Repl.Vol.), Article 27, Section 594B, now found at Section 2-202 of the Criminal Procedure Article, states:

(a) Arrest for crime committed in presence of police officer.--A police officer may arrest without a warrant any person who commits or attempts to commit any felony or misdemeanor in the presence of, or within the view of, such police officer.

(b) Arrest for crime apparently committed in presence of officer.--A police officer who has probable cause to believe that a felony or misdemeanor is being committed in the officer's presence or within the officer's view, may arrest without a warrant any person whom the police officer may reasonably believe to have committed the crime.

(c) Arrest from crime committed generally.--A police officer may arrest a person without a warrant if the officer has probable cause to believe that a felony has been committed or attempted and that

support a warrantless arrest requires a nontechnical, common sense evaluation of the totality of the circumstances in a given situation "in light of the facts and circumstances found to be credible by the trial judge." *See State v. Lemmon*, 318 Md. 365, 379, 568 A.2d 48, 55 (1990). The police must have "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion." *Id.* at 380, 568 A.2d at 56. It is this "totality of the circumstances" test under which a probable cause determination is properly reviewed.

In the present case, the information known to the officer at the time of the arrest was that three men were traveling in a vehicle (a Nissan Maxima) around 3:00am with a large stash of cash in the glove compartment and several plastic baggies of cocaine in the rear armrest. None of the men claimed ownership of the drugs or money, yet the location of the drugs and money in the Nissan Maxima would lead a reasonable officer in similar circumstances to believe that the three men had joint constructive possession over the contraband. In my view, this establishes probable cause for the arrest of each of the three individuals, including the petitioner.

What more would the majority require to justify an arrest? From the emphasis in its opinion, the majority would seemingly require police officers to consider whether the evidence gathered would be legally sufficient for a possession conviction *prior* to making the arrest.

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such person has committed or attempted to commit a felony whether or not in the officer's presence or view.

The majority asserts that "[w]hile the cases we have discussed above involve the sufficiency of the evidence, they, nonetheless, establish the law for determining some possession issues, even at the probable cause to arrest stage;" yet *cites no authority* for this proposition. Granted, the arresting officer must comprehend that which "possession of a controlled dangerous substance" entails.[2] The officer should not, however, be required to base a determination to arrest on the ability of the State to meet the standard of legal sufficiency for a conviction; nor should the reviewing courts measure the propriety of the arrest by such a standard.[3]

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[2] Possession is defined as "the exercise of actual or constructive dominion or control over a thing by one or more persons." *See* Maryland Code (1957, 1996 Repl. Vol., 2001 Supp.), Article 27, section 277(s).

[3] The majority opinion discusses several cases involving the standard of legal sufficiency for possession. See maj. op. pp. 5-16. (discussing, in order, *Garrison v. State*, 272 Md. 123, 321 A.2d 767 (1974), which held that the State did not meet the standard of legal sufficiency for possession of narcotics because there was no evidence to demonstrate actual or constructive dominion or control over the drugs; *State v. Leach*, 296 Md. 591, 463 A.2d 872 (1983), which held that there existed insufficient evidence to establish constructive possession over the narcotics; *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988), where the Court held that knowledge is an element of possession of narcotics which the State must establish and the court must so instruct the jury; *White v. State*, 363 Md.

Let me be clear on this point: I agree that the legal sufficiency of evidence in possession of narcotics cases requires the State to produce evidence of dominion or control over the narcotic allegedly possessed, and knowledge therewith, *see Moye v. State*, 369 Md. 2, 14, 796 A.2d 821, 828 (2002)(citing *Dawkins v. State*, 313 Md. 638, 649, 547 A.2d 1041, 1046 (1988)), beyond a

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150, 767 A.2d 855 (2001), which held that there existed insufficient evidence to establish beyond a reasonable doubt that the petitioner had knowledge of the presence of cocaine hidden in driver's trunk; and *Taylor v. State*, 346 Md. 452, 697 A.2d 462 (1997), which held that insufficient evidence existed to establish possession of marijuana because there was no evidence that petitioner exercised dominion or control over marijuana or had knowledge of its presence).

With respect to the legal sufficiency of evidence, it is true that "[m]ere proximity to the drug, mere presence on the property where it is located, or mere association, without more, with the person who does control the drug or property on which it is found, *is insufficient to support a finding of possession." Moye, v. State*, 369 Md. 2, 16, 796 A.2d 821, 829 (2002)(emphasis added)(quoting *Taylor v. State*, 346 Md. 452, 460, 697 A.2d 462, 466 (1997)). "There must be additional proof of knowledge and control to sustain a conviction for possession." *Taylor*, 346 Md. at 460, 697 A.2d at 466. Depending on the surrounding circumstances, proximity to the drug or association with the persons or property on which illegal narcotics are found, however, may be sufficient to support probable cause to justify a warrantless arrest.

reasonable doubt. I disagree, however, that the degree of evidence required for a conviction on the charge of possession of narcotics can be equated to that which is required of police officers when making probable cause determinations for warrantless arrests. Courts reviewing such determinations must not confuse or blend the two standards: probable cause for an arrest (a lower standard than legal sufficiency for a conviction) requires the *reasonable belief* that the person arrested had committed or was committing the felony crime of possession of narcotics. As we have oft explained, "probable cause is a nontechnical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify a conviction, but more evidence than that which would arouse a mere suspicion." *Woods v. State*, 315 Md. 591, 611, 556 A.2d 236, 246 (1989)(quoting *Nilson v. State*, 272 Md. 179, 184, 321 A.2d 301, 304 (1974)). A police officer who discovers (at 3 a.m.) three passengers in a vehicle which contained several baggies of cocaine in the rear armrest and a large wad of money (arguably, "drug money") in the front glove compartment could reasonably believe that those persons were exercising joint and constructive possession of the contraband in the vehicle, were engaging in drug trafficking, or conspiring to engage in drug trafficking, thus establishing probable cause for the arrest of each individual. Whether the State's Attorney can produce sufficient evidence to demonstrate, beyond a reasonable doubt, actual or constructive dominion or control over the narcotics and knowledge therein to warrant a conviction is another question--one that is properly left to the prosecutor,

initially, and the trier of fact, subsequently.[4]

Notwithstanding the majority's inappropriate emphasis on cases involving the sufficiency of evidence, the majority does cite two cases which, while arguably more on-point, are factually distinguishable. In *Livingston v. State*, 317 Md. 408, 564 A.2d 414 (1989), a state trooper stopped a vehicle for speeding; when the officer spotted two marijuana seeds on the floor of the front passenger side, he arrested all three people in a vehicle. Because Livingston was sitting in the backseat of the vehicle and could not have reasonably manifested dominion or control over the two seeds located on the front passenger side floor, we held that the state trooper could not have probable cause to arrest Livingston for the crime. We stated specifically that *"[w]ithout more than the mere existence of two marijuana seeds located in the front of the car,* we hold that the police officer lacked probable cause to arrest Livingston, a rear seat passenger, for possession of marijuana." *Id.* at 416, 564 A.2d at 418 (emphasis added). In the case *sub judice*, the police officer had more evidence than "the mere existence of two marijuana seeds"--he had several baggies of cocaine in the rear armrest and a large wad of money in the glove

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[4] Article 10, Section 34 of the Maryland Code grants prosecutors the authority to "prosecute ... all cases in which the State may be interested." Md.Code (1957, Repl.Vol.), Art. 10, § 34. Maryland State's Attorneys are entrusted with broad discretion to "institute and prosecute criminal causes." *Beverly v. State*, 349 Md. 106, 121, 707 A.2d 91, 98 (1998)(quoting *Brack v. Wells*, 184 Md. 86, 90, 40 A.2d 319, 321 (1944)).

compartment. It strains credulity to analogize the mere existence of two seeds on the floor of a vehicle to the secreted wad of cash and baggies of cocaine discovered in the present case. That two seeds on the front passenger floor of a vehicle is not enough to establish probable cause to arrest the back seat passenger does not, in my mind, equate to a lack of probable cause when a police officer discovers several baggies of cocaine and a large amount of cash.

Similarly, the facts which led to a finding of lack of probable cause in *Collins v. State*, 322 Md. 675, 589 A.2d 479 (1991), are markedly different than those before us today. In *Collins*, police officers observed five men standing approximately five feet from a Mustang in which a 35 mm film canister containing cocaine was ultimately found. *Id.* at 677, 589 A.2d at 480. The officers arrested all five men for possession of cocaine. *Id.* at 678, 589 A.2d at 480. We held that "[c]onsidering the totality of the circumstances, ... the mere presence of a closed film canister in a car found to contain cocaine [did not] support the requisite probable cause to arrest Collins as he stood outside of the vehicle. *No testimony suggested that he arrived at the lot in the car, that he had even been in the vehicle,* or that he knew the suspected cocaine was in the back seat of the car." *Id.* at 682-83, 589 A.2d at 482 (emphasis added). In the present case, Pringle was not only physically in the car, he was seated in proximity to the cocaine and the money, items about which it was reasonable to believe that Pringle could have had knowledge of or control over. Evaluating the totality of the circumstances, with consideration of the facts as presented to the officer and rational inferences derived therefrom, I believe that probable cause existed to justify

the officer's warrantless arrest of Pringle.

Instead of focusing on the factual scenario presented to the Court, and more apposite, to the police officer, the majority chooses to jump to hypothetical extremes in an attempt to justify its operative heightening of the probable cause standard. In note 12, the majority erroneously asserts that if the Court were to adopt the position proffered by the appellant, then so long as some contraband was found, probable cause would exist, *per se*, and the police could arrest *everyone*, whether in a twelve-passenger van or movie theater. Such an assertion is specious in that the totality of the circumstances test, itself, precludes these sweeping generalizations; instead, it requires a review of the *specific* facts and circumstances presented to the officer at the scene of the purported crime, and if questioned, a ruling regarding the officer's determination based upon these specific facts and circumstances. A court should not, and quite simply cannot, conjecture upon whether probable cause exists in factual situations not before it. Should I choose to entertain the majority's hypotheticals, however, I would unequivocally assert that baggies of cocaine found in one area of a packed movie theater, *without more*, would not constitute probable cause to arrest *everyone* in the theater; I believe that the totality of circumstances test, itself, would preclude a finding of validity in such circumstances.

The majority's attempt, however discrete, to incorporate a higher standard-- that of the sufficiency of evidence-into the properly-applied probable cause standard will only serve to burden the law enforcement community. The majority apparently hopes to create prosecutors out of police officers by forcing law enforcement officers to

guarantee the sufficiency of evidence for conviction on the crime of possession prior to initiating a viable arrest. Just as the standards are different, so are the duties of those who apply them. In the simplest of terms, police officers assist in enforcing the laws by arresting suspected violators, prosecutors assist in enforcing the laws by attempting to secure State-mandated punishment for these violations by presenting evidence which demonstrates, beyond a reasonable doubt, that the accused violated the law.

Certainly police officers must act in accordance with constitutional and statutory policies and procedures, but forcing officers to base their arrests of suspected wrong-doers upon whether a conviction may stand is unacceptable. *See Woods*, 315 Md. at 611, 556 A.2d at 246 (explaining that "whether an arrest for a felony without a warrant is constitutionally valid necessarily turns upon whether, at the moment the arrest was made, the arresting officer or the police acting as a team had probable cause to make it--whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the accused had committed or was committing a felony")(quoting *Nilson*, 272 Md. at 184, 321 A.2d at 304). Again, the decision to *charge* a wrong-doer is within the discretionary purview of the prosecutors, and the decision to *convict*, with the trier of fact. Sufficiency of evidence for conviction may have similar analytical markings with probable cause for arrest, but the two are not synonymous.

In *Wilkes v. State*, 364 Md. 554, 774 A.2d 420 (2001), we quoted the United States Supreme Court's apt

explanation of the conception of probable cause:

> In dealing with probable cause, however, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.
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> Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating ... often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

Id. at 584-85, 774 A.2d at 438 (quoting *Brinegar v. United States*, 338 U.S. 160, 175-76, 69 S.Ct. 1302, 1310-11, 93 L.Ed. 1879, 1890-91 (1949)); *accord Doering v. State*, 313 Md. 384, 403, 545 A.2d 1281, 1290-91 (1988). Again, I fear that the majority's holding today will, in effect, "unduly hamper law enforcement" in this State. Probable cause, a concept of probabilities, requires only that "the facts and circumstances within the officer's knowledge ... justify the belief of a reasonable person that a crime has been or is being committed" and that the person arrested participated in the crime. *Johnson v. State*, 356 Md. 498, 504, 740 A.2d 615, 618 (1999). The practical considerations on which the officer acted in the case *sub*

judice were reasonable in light of the evidence discovered. I would affirm the holding of the Court of Special Appeals; the circumstances were sufficient to constitute probable cause to arrest the appellant.

Given that I would find sufficient probable cause to arrest the appellant, the issue of attenuation would be immaterial. The majority's conclusion regarding lack of probable cause, however, provides the occasion to address the issue of attenuation, in view of the fact the petitioner confessed. The occasion to address the attenuation issue must be exercised by the trial court in the first instance, rather than an appellate court, because questions of this nature are necessarily "fact-specific." *See United States v. Burton*, 288 F.3d 91, 100 (3d Cir.2002).

I would be remiss, however, if I neglected to comment upon the flawed attenuation analysis proffered by the majority in this case. First, while I agree that "an individual's waiver of Miranda warnings taken alone would be insufficient to purge the taint of the original unlawful conduct under a Fourth Amendment analysis," a person's voluntary conduct and demonstration of free will may "purge the primary taint" associated with the unlawful conduct. *See Miles v. State*, 365 Md. 488, 526, 781 A.2d 787, 809 (2001)(quoting *Brown v. Illinois*, 422 U.S. 590, 602, 95 S.Ct. 2254, 2261, 45 L.Ed.2d 416, 426 (1975)). As we noted in *Miles*, the Supreme Court refined the attenuation doctrine to include an exploration into the voluntariness of an accused's conduct. *See id.* at 523, 781 A.2d at 807 (citing *United States v. Ceccolini*, 435 U.S. 268, 276-77, 98 S.Ct. 1054, 1060, 55 L.Ed.2d 268, 277 (1978)). Substantively speaking, I agree with the analysis of the Court of Special Appeals concerning the voluntariness of the appellant's confession and the lack of

coercion on the part of the police officers. The statement by the police on which the majority solely relies in finding "coercion" is "you are all going to get arrested."[5] As the Court of Special Appeals correctly stated, "[t]his statement flowed naturally from the attendant circumstances of finding three suspects within the proximity of the illegal drugs." *Pringle*, 141 Md.App. at 308, 785 A.2d at 799. Informing the suspects that they were going to be arrested is not a statement that would be considered exploitative, threatening, or made in an attempt to induce a confession; it was a statement of fact concerning the actions the officer was about to take. With respect to the subsequent confession, the majority failed to consider the voluntariness of the petitioner's conduct, a factor not only

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[5] The majority fails to acknowledge that there was a factual dispute regarding the subsequent part of the alleged statement made by the police officer. The petitioner alleges that prior to the arrests, the officer indicated that if one person would confess the others would be let go. The officer denies making such a statement. Regardless of whether the statement occurred, the Court of Special Appeals correctly points out that it could not have had the inducing or coercing effect that the petitioner alleges because the petitioner did not confess in response to this statement in order to ensure that his friends would not be arrested. All three men were, in fact, taken into custody; appellant's confession occurred more than two hours after the arrest. Appellant's allegation "that he confessed so that his friends would go free is inconsistent with the sequence of events." *Pringle v. State*, 141 Md.App. 292, 309, 785 A.2d 790, 800 (2001).

independently mandated by the *Ceccolini* decision, but one that may be construed as an intervening factor under *Brown v. Illinois*, 422 U.S. 590, 603-04, 95 S.Ct. 2254, 2261-62, 45 L.Ed.2d 416, 427 (1975).[6] Instead, it simply excused the confession as a "product of his illegal arrest and the ... continuing coercion arising from that illegal arrest" without any consideration or deliberation upon the voluntariness of petitioner's conduct. *See*, maj. op. at 27.

For the aforementioned reasons, I respectfully dissent.

Judge WILNER and Judge HARRELL have authorized me to state that they join in the views expressed herein.

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[6] I further disagree with the majority's application of the temporal factor of attenuation analysis and the weight it affords that factor thereto. As we stated in *Miles*, there exists no specific length of time by which the taint of unlawful conduct will be purged. *Miles*, 365 Md. at 527-28, 781 A.2d at 810. The majority, on the one hand, acknowledges that "a lengthy detention can be used to exploit an illegal arrest at least as easily as a brief detention"and thus, the temporal factor is "ambiguous," see maj. op. at 22 (quoting *Ferguson v. State*, 301 Md. 542, 550, 483 A.2d 1255, 1259 (1984)); on the other hand, however, the majority seems to indicate that if "[t]he time between the illegal arrest and the confession is the natural time that likely would have lapsed in such a situation," then the temporal factor should automatically weigh against the State. See maj. op. at 22. I disagree with any implication that the "natural lapse of time" should be a decisive standard in evaluating attenuation. The temporal factor cannot be considered in a vacuum; surrounding facts and circumstances must also be considered.

APPENDIX B

Court of Special Appeals of Maryland.

Joseph Jermaine PRINGLE
v.
STATE of Maryland.

No. 705, Sept. Term, 2000.

Nov. 28, 2001.

Submitted before JAMES R. EYLER, SONNER, and JAMES S. GETTY, (Ret., specially assigned), JJ.

JAMES R. EYLER, Judge.

Appellant, Joseph Jermaine Pringle, was convicted by a jury in the Circuit Court for Baltimore County of possession with intent to distribute cocaine and possession of cocaine. Finding no error, we shall affirm the convictions.

Background

In the early morning of August 7, 1999, Officer Jeffrey Snyder, a Baltimore County police officer, conducted a routine traffic stop of a Nissan Maxima traveling on High Falcon Road. The vehicle was speeding, and the driver was not wearing a seat belt. Officer Snyder asked the driver for his license and registration, and the driver, Donte Partlow, complied with the request. Accompanying Partlow in the car were appellant, sitting in the front

passenger seat, and Otis Smith, sitting in the backseat.

When Partlow opened the glove compartment to retrieve the vehicle registration, Officer Snyder noticed "a large amount of money rolled up." Officer Snyder did not inquire about the money in the glove compartment, but took the license and registration and checked the Maryland Motor Vehicle Administration computer system for any outstanding violations. After the computer check did not reveal any violations, Officer Snyder issued an oral warning to Partlow, who was standing outside the car. At this time, a second police car arrived and parked directly behind Officer Snyder's car. Officer Snyder then inquired of Partlow whether he had "any drugs, weapons, [or] narcotics in the vehicle." Partlow said he did not. Officer Snyder then asked whether he could search the vehicle. Partlow consented to the search, and Officer Snyder asked appellant and Smith to step out of the vehicle. After frisking them, Officer Snyder asked all three men to be seated on the sidewalk curb. In the search, Officer Snyder seized $763.00 from the glove compartment and five plastic baggies of cocaine from the backseat. At the hearing on appellant's motion for suppression, Officer Snyder testified as follows, as to the discovery of the cocaine:

> [DEFENSE COUNSEL]: And you recovered some suspected narcotics?
> [OFFICER Snyder]: Yes.
> [Q.]: And they were recovered from inside an armrest that was located in the back seat?
> [A.]: Yes.
> [Q.]: Did you have--did you have to lift the armrest to get to those drugs?
> [A.]: The back rest was up. The seat is flat. The

armrest goes up and down. It was in the up position. I pushed it down and the drugs were subsequently there.

[Q.]: Okay. So, the back rest was actually in an upright position?

[A.]: Yes.

[Q.]: And the drugs were actually found sandwiched between the armrest and the back seat of the car?

[A.]: Correct.

[Q.]: And you hadn't seen these drugs when you initially approached the car?

[A.]: Correct.

[Q.]: And you shined your light inside and the first time you noticed the drugs was when all three individuals were sitting on the curb, correct?

[A.] Correct.

Officer Snyder questioned the three men as to the ownership of the drugs and money. He advised all three passengers of the car that, unless he knew who possessed the drugs, "you are all going to get arrested." None of the passengers offered any information as to the ownership of the drugs or the money. Officer Snyder, with the assistance of the other officer at the scene, arrested the three men and transported them to the police station.

A few hours later, Officer Snyder met with appellant and, following a waiver of his *Miranda*[1] rights, procured a written confession. Appellant said that the cocaine belonged to him and that he and his friends were on their way to a party where he either intended to sell the cocaine

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[1] *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

or "use it for sex." Appellant went on to say that Partlow and Smith did not know about the drugs.

At trial, Officer Snyder testified, and his testimony was similar to that given at the suppression hearing. Irwin Litopsky, a forensic chemist, also testified and stated that the baggies discovered by Officer Snyder contained .7 grams of cocaine. Detective Frank Massoni, an expert in controlled substances, testified that the drugs were intended to be distributed.

Discussion

1.

Appellant contends that the circuit court erred in permitting Detective Massoni to express an expert opinion. The following colloquy is relevant:

[Prosecutor]: Detective, based upon your expertise in the area of drug distribution, packaging and recognition, do you have an opinion, based upon that expertise, within a reasonable degree of scientific certainty, as to whether the defendant intended to distribute the cocaine that is enclosed in those five zip lock baggies?

[Defense Counsel]: Object.

The Court: Overruled.

[Prosecutor]: Do you in fact have an opinion?

[Witness]: My opinion is that the drugs that were here were going to be distributed in some form or fashion, either to regain money or to be used for sex.

[Prosecutor]: And how is it you come to that opinion, officer?

[Witness]: Based on the statement that I have before

me and the fact that, I mean, we have got five baggies and they are packaged individually, which is the way they are usually packaged for resale, generally twenty dollar bags.

The statement referred to was a statement by appellant that he was going to a party to sell the drugs or exchange them for sex.

Appellant contends that the evidence was inadmissible under Rule 5-704(b) because it constituted an opinion as to appellant's mental state at the time of his arrest. Additionally, according to appellant, the evidence violated the rule that one witness cannot comment on the credibility of another witness, in this case, appellant. We disagree.

The witness never opined as to appellant's state of mind or his credibility. The witness opined that "the drugs were going to be distributed" with no reference to appellant's intent or credibility.

Appellant's reliance on *Hartless v. State*, 327 Md. 558, 611 A.2d 581 (1992), is misplaced. The expert opinion in Hartless is distinguishable from Detective Massoni's testimony. There, the expert explicitly alluded to the defendant's state of mind, writing in a report, "it is my opinion that David Hartless did not intend to murder the victim ...". *Hartless*, 327 Md. at 572-73, 611 A.2d 581. Contrary to appellant's contentions, Detective Massoni did not explicitly or implicitly testify that appellant intended to distribute drugs. Rather, Detective Massoni's opinion related to the quantity and packaging of the drugs that were contained in five zip lock baggies each containing similar amounts of cocaine. The substance of Detective Massoni's testimony was consistent with his area of expertise in drug distribution, packaging, and recognition.

The case of *Bohnert v. State*, 312 Md. 266, 539 A.2d 657 (1988), upon which appellant relies, is also distinguishable from the instant case. After being properly qualified, the expert testified that the victim was abused, basing her opinion solely on the results of questioning the victim; no other objective medical tests or medically recognized syndromes were utilized. *Bohnert*, 312 Md. at 276, 539 A.2d 657. In effect, the expert was testifying to the credibility of the victim, the key witness in the case. The Court recognized, "[i]n a criminal case tried before a jury, a fundamental principle is that the credibility of a witness and weight to be accorded the witness' testimony are solely within the province of the jury." *Id.* at 277, 539 A.2d 657 (citing *Battle v. State*, 287 Md. 675, 685, 414 A.2d 1266 (1980)).

In the instant case, appellant did not testify. The jury had no reason to weigh the testimony and credibility of appellant. Even if appellant had testified, Detective Massoni's remarks would have had a different consequence than the remarks in *Bohnert*. Detective Massoni's statement that the drugs were going to be distributed "either to regain money or to be used for sex" was based on his review of appellant's written statement. The mere repetition of appellant's statement was not a judgment of appellant's credibility. In contrast to *Bohnert*, Detective Massoni based his expert opinion on several factors, including the packaging of the drugs, appellant's statement, and his expertise in drug distribution, packaging and recognition. Similar to our findings in *Wilson v. State*, 136 Md.App. 27, 764 A.2d 284 (2000), Detective Massoni's expert opinion would not impinge on the jury's function to weigh credibility. *Wilson*, 136 Md.App. at 55-68, 764 A.2d 284 (rejecting the argument that four

doctors' expert opinions were inadmissible comments on credibility).

2.

Appellant contends that the circuit court erred in denying his motion to suppress his statement to a police officer. In support of that contention, he argues that the statement was (1) the fruit of an illegal arrest, and (2) the result of an improper inducement.

Probable Cause

The United States Supreme Court instructs us that "the usual traffic stop is more analogous to a so-called 'Terry stop,' ... than to a formal arrest." *Berkemer v. McCarty*, 468 U.S. 420, 439, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)); *see also Livingston v. State*, 317 Md. 408, 411, 564 A.2d 414 (1989). "Therefore, stopping a vehicle for a speeding [or seat belt] violation and detaining its occupants does not constitute a custodial arrest." *Livingston v. State*, 317 Md. 408, 412, 564 A.2d 414 (1989) (citing *Colorado v. Bannister*, 449 U.S. 1, 3, 101 S.Ct. 42, 66 L.Ed.2d 1 (1980)). In the instant case, the speeding and seat belt violations constituted a valid reason for stopping the vehicle in which appellant was a passenger, and the stop shall not be "rendered invalid by the fact that it was 'a mere pretext for a narcotics search.'" *Whren v. United States*, 517 U.S. 806, 813, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996) (quoting *United States v. Robinson*, 414 U.S. 218, 221, n. 1, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973)).

Our inquiry, similar to that in *Doering v. State*, 313 Md. 384, 545 A.2d 1281 (1988), is whether Officer Snyder, after making a legal traffic stop and conducting a legal search of the vehicle, had probable cause to believe that a felony had been committed and that appellant had been involved in the commission of that felony. *Doering*, 313 Md. at 403, 545 A.2d 1281. Clearly, upon finding the cocaine, Officer Snyder had probable cause to believe a felony had been committed, specifically, possession of a controlled dangerous substance. The present question is whether Officer Snyder had probable cause to believe appellant, at the time of the arrest, was in possession of the controlled dangerous substance.

"The rule of probable cause is a non-technical conception of a reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction but more evidence than that which would arouse a mere suspicion." *Id.*; *see also Collins v. State*, 322 Md. 675, 680, 589 A.2d 479 (1991); *Sterling v. State*, 248 Md. 240, 245, 235 A.2d 711 (1967); *Edwardsen v. State*, 243 Md. 131, 136, 220 A.2d 547 (1966). The United States Supreme Court explained this nontechnical conception in *Brinegar v. United States*, 338 U.S. 160, 176, 69 S.Ct. 1302, 93 L.Ed. 1879 (1949):

> Because many situations which confront officers in the course of executing their duties are more or less ambiguous, room must be allowed for some mistakes on their part. But the mistakes must be those of reasonable men, acting on facts leading sensibly to their conclusions of probability. The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating ... often opposing interests.

> Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers' whim or caprice.

See Doering, 313 Md. at 403, 545 A.2d 1281.

In the instant case, during the hearing on appellant's motion to suppress, defense counsel argued that there was no basis upon which to infer appellant had knowledge of the drugs. The following exchange occurred.

> The Court: Well, I think one reason they may know they are there is because he placed them there. Within an arm's reach. That's a reasonable assumption.
>
> [Defense Counsel]: Again, your Honor, ...
>
> The Court: I am thinking only on the fact that they were in arm's reach in the way he was seated. Especially when they were not secreted. They were just basically placed back there and hidden by the armrest. That was the information that [the officer] had before he made the arrest.
>
> [Defense Counsel]: I would argue, Your Honor, that the drugs are secreted under those circumstances. [The officer] can't see them. The armrest is certainly placed up there for some purpose.
>
> The Court: To hide them.
>
> [Defense counsel]: To hide them.
>
> The Court: From the police.
>
> [Defense counsel]: Exactly.
>
> The Court: Well, he didn't do a very good job. He didn't have much time.

The trial court concluded:

> Upon the search drugs were found within an arm's reach of [Pringle], not in a secretive place or in a locked place. As well as put the armrest back up [sic]. The other factor that was not argued is the fact that there was money in front which you have money in front, drugs in the back, both in arm's reach of this particular Defendant, I think the officer had probable cause to make the arrest as he did.

The trial court did not cite authority for its "arm's reach" standard, but we presume it was derived from the application of the *Folk* test to contraband found within automobiles. The *Folk* test, announced by this Court in *Folk v. State*, 11 Md.App. 508, 275 A.2d 184 (1971), consists of four factors. The factors are:

> 1) proximity between the defendant and the contraband, 2) the fact that the contraband was within the view or otherwise within the knowledge of the defendant, 3) ownership or some possessory right in the premises or the automobile in which the contraband is found, or 4) the presence of circumstances from which a reasonable inference could be drawn that the defendant was participating with others in the mutual use and enjoyment of the contraband.

Folk, 11 Md.App. at 518, 275 A.2d 184. *See also Moye v. State*, 139 Md.App. 538, 549-50, 776 A.2d 120 (2001); *West v. State*, 137 Md.App. 314, 357-58, 768 A.2d 150 (2001); *Herbert v. State*, 136 Md.App. 458, 465-66, 766 A.2d 190 (2001); *Veney v. State*, 130 Md.App. 135, 143-44, 744 A.2d 1094 (2000); *In Re Nahif A.*, 123 Md.App. 193, 209, 717 A.2d 393 (1998); *Hall v. State*, 119 Md.App. 377, 394, 705 A.2d 50 (1998); *Colin v. State*, 101 Md.App. 395, 406, 646 A.2d 1095 (1994).

The *Folk* test is a useful tool for determining whether someone exercises actual or constructive dominion or

control over contraband, but it is not a bright line rule that permits law enforcement officials and trial courts to find joint possession if the facts of a case satisfy any one of the four factors. *Folk*, like the instant case, was an automobile case, and, when this Court discussed the "proximity" factor in *Folk*, we stated:

> In the case at bar, the proximity between the appellant and the marihuana could not be closer, short of direct proof that the appellant herself was in exclusive physical possession of the marihuana. *She was one of six occupants in a Valiant automobile and was, therefore, whatever her position in the car, literally within arm's length of every other occupant of that automobile.* The marihuana cigarette being smoked was, at any point in time, within direct physical possession of one of those occupants. Proximity could not be more clearly established.

Folk, 11 Md.App. at 518, 275 A.2d 184 (emphasis added).

The *Folk* test was again applied in *Colin v. State*, 101 Md.App. 395, 646 A.2d 1095 (1994), in which this Court said:

> As a passenger, it may be true that Colin did not exercise "control" over the vehicle. Colin was traveling in the same vehicle as the cocaine, however, and that is sufficient to establish "close proximity." Although the cocaine was not in plain view, being secreted away in the door, this factor is also not determinative.... Moreover, as Colin was a voluntary passenger, it may be reasonably inferred that he anticipated "the mutual enjoyment of the contraband." Further, from his riding in the vehicle with appellant Heath, it could be reasonably inferred that they wanted to use the drug jointly.

Colin, 101 Md.App. at 407, 646 A.2d 1095 (citations omitted).

In *Colin*, we examined all four *Folk* factors and found the "proximity" and "mutual enjoyment" factors were satisfied. *Id.* *Colin* was followed a year later in *Pugh v. State*, 103 Md.App. 624, 652-53, 654 A.2d 888 (1995), a case in which cocaine was found inside the spare tire under the carpeting of the trunk. *Folk*, *Colin*, and *Pugh* were all cases in which this Court was tasked to review the sufficiency of the evidence to sustain a possession conviction.

Appellant relies on *Livingston v. State*, 317 Md. 408, 564 A.2d 414 (1989), in which the Court dealt with the issue of probable cause. In *Livingston*, the Court held that "the presence of two seeds on the floor in the front of the car, without more, [was] insufficient to inculpate [Wesley Warren] Livingston, a rear seat passenger, for possession of marijuana." *Livingston*, 317 Md. at 413, 564 A.2d 414.

Livingston is distinguishable from the case before us. In *Livingston*, there were two marijuana seeds on the front floorboard and the defendant was in the back seat. In the case before us, there were five baggies behind an armrest in the back seat and a substantial amount of cash in the glove compartment located in front of appellant. We see a significant difference between two marijuana seeds and five baggies plus cash. The circumstances were sufficient to constitute probable cause to make an arrest.

Inducements

The introduction of a criminal defendant's confession is permitted at trial if the confession was, "(1) voluntary under Maryland nonconstitutional law, (2) voluntary under

the Due Process Clause of the Fourteenth Amendment of the United States Constitution and Article 22 of the Maryland Declaration of Rights, and (3) elicited in conformance with the mandates of *Miranda*." *Hoey v. State*, 311 Md. 473, 480, 536 A.2d 622 (1988). To overcome a pretrial motion to suppress, the State must establish by a preponderance of the evidence that the confession was freely and voluntarily given, and not a product of improper threats, inducements, or promises. *Winder v. State*, 362 Md. 275, 307, 765 A.2d 97 (2001). "Maryland law demands that confessions 'be shown to be free of any coercive barnacles that may have attached by improper means to prevent the expression from being voluntary.'" *Reynolds v. State*, 327 Md. 494, 504, 610 A.2d 782 (1992) (quoting *Hillard v. State*, 286 Md. 145, 150, 406 A.2d 415 (1979)).

In the case *sub judice*, appellant relies on nonconstitutional grounds for challenging the voluntariness of his confession. Appellant contends he confessed because of promises by Officer Snyder to release the other occupants of the vehicle. Appellant argues Officer Snyder's statement to the suspects at the arrest scene, that unless he knew who possessed the drugs, "you are all going to get arrested," induced appellant's subsequent confession. Appellant testified at the suppression hearing that Officer Snyder reissued a similar inducement during the police station interrogation. Officer Snyder testified the alleged incident at the police station never occurred, however. The circuit court denied appellant's motion to suppress, finding that the confession was voluntary.

In general, we review the totality of the circumstances surrounding the confession to determine voluntariness.

Reynolds, 327 Md. at 495, 610 A.2d 782. Relying on *Hillard v. State*, 286 Md. 145, 406 A.2d 415 (1979), the Court established a two-part test whereby a confession is deemed involuntary and inadmissible, if "(1) a police officer or an agent of the police force promises or implies to a suspect that he or she will be given special consideration from a prosecuting authority or some other form of assistance in exchange for the suspect's confession, and (2) the suspect makes a confession in apparent reliance on the police officer's statement." *Winder*, 362 Md. at 309, 765 A.2d 97. In the instant case, neither prong is satisfied.

Under the first prong, we apply an objective test to determine whether Officer Snyder's statement was a threat, promise, or inducement. "Although a defendant need not point to an express *quid pro quo*, '[a] mere exhortation to tell the truth is not enough to make a statement involuntary.'" *Winder*, 362 Md. at 311, 765 A.2d 97 (quoting *Reynolds*, 327 Md. at 507, 610 A.2d 782). There is a distinction between a permissible exhortation, "much better if you told the story," *Ball v. State*, 347 Md. 156, 174, 699 A.2d 1170 (1997); general recommendation that suspect seek advice, *Reynolds*, 327 Md. at 509, 610 A.2d 782; "get it off your chest," *Bean v. State*, 234 Md. 432, 442, 199 A.2d 773 (1964); "better if [you] told the truth," *Ralph v. State*, 226 Md. 480, 486, 174 A.2d 163 (1961); "the truth hurts no one," *Merchant v. State*, 217 Md. 61, 68, 141 A.2d 487 (1958); "the truth would hurt no one," *Deems v. State*, 127 Md. 624, 630, 96 A. 878 (1916); "I want you to tell me the truth," *Nicholson v. State*, 38 Md. 140, 153 (1873); "no sense in lying," *Clark v. State*, 48 Md.App. 637, 646, 429 A.2d 287 (1981), and an impermissible promise or offer; "produce

the narcotics, [and your] wife would not be arrested," *Stokes v. State*, 289 Md. 155, 157, 423 A.2d 552 (1980); "if you are telling me the truth ... I will go to bat for you," *Hillard*, 286 Md. at 147, 406 A.2d 415; "it would be better for him to tell the truth, and have no more trouble about it,"*Biscoe v. State*, 67 Md. 6, 6, 8 A. 571 (1887). Consistent among the later category, prior to the confession, the suspect is promised something as a consequence of his or her response or silence. In contrast, Officer Snyder's statement communicated that all three suspects were going to be arrested for possession. This statement flowed naturally from the attendant circumstances of finding three suspects within the proximity of the illegal drugs. Officer Snyder subsequently arrested the three suspects, consistent with the import of his statement. Officer Snyder denied telling the three suspects that "if one person is going to be the one who fesses [sic] up tell me now so I can let the other two go." Instead, Officer Snyder sought the truth, stated his intent to arrest the suspects, and carried out the arrests. Absent an express promise, threat, or inducement, we shall not consider the defendant's subjective belief that he or she would benefit by confessing. *Winder*, 362 Md. at 311, 765 A.2d 97. Consequently, we reject appellant's argument that he believed the other suspects would be released from custody if he confessed.

Assuming *arguendo* that Officer Snyder promised to confer a benefit upon appellant if he confessed, we still affirm the outcome because the second prong necessarily fails. Under the second prong, we determine whether there was a nexus between Officer Snyder's statement and appellant's confession by examining the particular facts and circumstances surrounding the confession. *See id.* at

312, 765 A.2d 97. We must "ascertain whether he [appellant] had been influenced by such inducement in making the confession." *Ralph v. State*, 226 Md. 480, 486, 174 A.2d 163 (1961). We shall consider the amount of time elapsed between the alleged inducement and the confession, and any intervening factors, besides the statement, that might have caused the confession. *See Winder*, 362 Md. at 312-13, 765 A.2d 97.

Officer Snyder made the alleged inducement to appellant sometime shortly after 3:16 a.m., however, appellant did not make the confession until 5:30 a.m. At least two hours elapsed generating an issue of attenuation. While no bright line test exists for delineating a proper time frame, in *Ralph*, the court held that an alleged inducement made eight hours before the confession was too attenuated, while in *Stokes*, the court held a confession made in direct response to an inducement was sufficiently related. *Ralph*, 226 Md. at 486, 174 A.2d 163; *Stokes*, 289 Md. at 157-58, 423 A.2d 552. During the passage of two hours, appellant's lack of urgency in responding to Officer Snyder's statement diminishes the alleged impact. The timing factor alone would not dispose of the issue; consequently, we address the intervening considerations.

Appellant's argument that he confessed so his friends would go free is inconsistent with the sequence of events. All three suspects, including appellant, were arrested at the scene prior to their transfer to the police station and appellant's confession. Our focus is only on the alleged inducement at the scene because the trial court rejected appellant's claim of a subsequent inducement at the police station. The alleged inducement at the scene consists of a single statement, "you are all going to get arrested." Appellant's argument fails because he and his friends had

already been arrested when he later made the oral and written confession. Appellant's transfer from the crime scene to the police station also disrupted the nexus between the alleged inducement and confession. Thus, following the arrest, no benefit could be conferred and any influence from Officer Snyder's statement had seriously dissipated.

Although we reach our decision on different grounds, it is unsettled whether a promise to benefit a friend justifies finding the subsequent confession involuntary. The Court in *Stokes*, refused to consider whether kinship or what degree of closeness is required between the defendant and third party. *Stokes*, 289 Md. at 160 n. 2, 423 A.2d 552 (finding that a promise to benefit
defendant's wife was an inducement). In *Finke*, however, the Court found no degree of closeness, stating that "the record contains nothing to indicate that appellant actually enjoys a particularly close relationship with the child, and the nature of their kinship does not imply such a closeness." *Finke v. State*, 56 Md.App. 450, 485, 468 A.2d 353 (1983) (defendant and the third party were first cousins). *Cf. Bellamy v. State*, 50 Md.App. 65, 77-78, 435 A.2d 821 (1981) (defendant's confession induced by promise to benefit fiancee was found involuntary); *Jarrell v. State*, 36 Md.App. 371, 373 A.2d 975 (1977)(consenting to search based on promise to release sick friend was found involuntary). We need not decide this issue.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY APPELLANT.

Dissenting opinion by SONNER, Judge.

I concur with the bottom line holding on Pringle's first issue. Although I believe the admission of the testimony was wrong, the error was not preserved. I must respectfully, but emphatically, dissent on the second issue. The majority, in finding that Officer Snyder had probable cause to arrest Pringle, and in affirming this conviction, has promulgated dangerous precedent that ignores developed law and guides law enforcement to act against the grain of due process and ethical police procedures.

First, as to the dissent: When Officer Snyder discovered contraband secreted in the back seat armrest of the car in which Pringle was riding, he was in doubt as to whom the drugs belonged and whom he could arrest. He did not conclude that the drugs belonged jointly to all three passengers, including the driver of the car, the back seat passenger, and Pringle, who sat in the front passenger seat. Reacting to his doubt, the officer threatened to arrest all three men, unless one of them admitted ownership of the forbidden drugs. When no one did so, Officer Snyder, with his doubt still unresolved, arrested all three. Now, the majority sanctions such police work, concluding that Officer Snyder had probable cause to arrest all three men to squeeze a confession of ownership from one of them. I am unable to go along with what I believe is not only a stretch to affirm a conviction, but an analysis that ignores a clear line of cases from the Court of Appeals spanning three decades.

Professors Charles Whitebread and Ronald Stevens wrote, in 1972, that constructive possession of narcotics prosecutions "have engendered such conceptual confusion and given rise to so many conflicting rulings 'that for the practitioner the problems are difficult to understand and apparently for the courts impossible to master.'" Charles

H. Whitebread & Ronald Stevens, *Constructive Possession in Narcotics Cases: To have and Have Not*, 58 Va. L.Rev. 751 (1972) (quoting *United States v. Holland*, 445 F.2d 701, 704 n. 1 (D.C.Cir.1971) (Tamm, J., concurring)). This Court has compounded the confusion, at times, by diverging from the precedent developed by the Court of Appeals in joint possession cases, which can lead "to contrary conclusions in cases with similar facts." *See* Dana L. Weinstein, *The Maryland Survey: 1996- 1997: Recent Decisions: The Maryland Court of Appeals*, 57 Md. L.Rev. 795, 813 (1998). With the majority opinion, I believe, this Court again fails to heed and follow controlling law from the Court of Appeals.

In 1971, in *Folk v. State*, 11 Md.App. 508, 275 A.2d 184, Judge Moylan reviewed Maryland's previous joint possession cases and articulated a four-part test that reflected the "common thread" running through those cases. One of the enumerated factors was the proximity between the accused and the contraband. *See id.* at 518, 275 A.2d 184.[1] This Court affirmed Lillie Mae Folk's conviction because there was sufficient evidence to convict all six occupants of the car for possession of

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[1] The other enumerated factors were whether (1) "the contraband was within the view or otherwise within the knowledge of the defendant;" (2) the defendant exercised ownership or some other kind of possessory interest in the location where the drugs were found; and (3) whether the circumstances indicated that "the defendant was participating with others in the mutual use and enjoyment of the contraband." *Folk*, 11 Md.App. at 518, 275 A.2d 184.

marijuana. The discovered drugs were "within arm's length" of all of the passengers, satisfying the proximity factor. *Id.* But the evidence did not stop with mere proximity, as Judge Moylan explained:

> Nor would there be, under the circumstances of this case, any difficulty in drawing a reasonable inference that the marihuana was within the view, or otherwise within the knowledge, of the appellant. In a darkened car in a dark field, the glow from a lighted cigarette is clearly visible within that maximum radius of four to five feet between the glow and the viewer. Knowledge of the presence of marihuana would be imparted even more emphatically by the sense of smell, in a situation where the cloud of smoke and the peculiar pungent odor filled the interior of a tightly-closed automobile. Neither would the inference be unreasonable that some conversation transpired among the six persons huddled there in the dark dealing with what the cigarette and the fumes were all about. It would, indeed, be unreasonable not to infer knowledge of the marihuana on the part of the appellant.

Id. This Court has returned to the four-part test articulated in *Folk* several times. *See, e.g., Pugh v. State*, 103 Md.App. 624, 654 A.2d 888 (1995); *Colin v. State*, 101 Md.App. 395, 646 A.2d 1095 (1994); and the six other cases cited in the majority opinion on page 797.

Three years after *Folk*, however, in *Garrison v. State*, 272 Md. 123, 321 A.2d 767, (1974), the Court of Appeals overturned a conviction involving joint possession, after we had affirmed it in an unreported opinion. Judge O'Donnell, writing for a unanimous Court, conducted his own extensive review of Maryland joint possession cases.

Without discussing *Folk* or applying any four-part test, Judge O'Donnell stated that the proper determination was whether the accused exercised some "dominion or control," either jointly or solely, over the contraband. *Id.* at 142, 321 A.2d 767. The Court then concluded that the evidence was insufficient to show that Shirley Garrison jointly possessed the heroin seized from the apartment that she shared with her husband. Since *Garrison*, the Court of Appeals has consistently ignored the *Folk* four-part test, so often applied by this Court, and,
instead, has preserved Judge O'Donnell's approach of asking whether the accused exercised some dominion or control over the contraband.[2]

The next significant Court of Appeals ruling on joint possession was *State v. Leach*, 296 Md. 591, 463 A.2d 872 (1983), in which the accused occupied an apartment with his brother and had been observed by police going in and out of the building several times. A search of the apartment produced evidence of a commercial narcotics operation, including two scales, cutting tools, and

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[2] Courts in other jurisdictions also have focused on the accused's dominion or control of the contraband, and have rejected proximity as a conclusive factor in joint possession cases. *See, e.g., United States v. Blue*, 957 F.2d 106 (4th Cir.1992) ("The mere proximity of [contraband] [ ] to a passenger in a car goes only to its accessibility, not to the dominion or control which must be proved to establish possession."); *Reid v. State*, 212 Ga.App. 787, 442 S.E.2d 852 (1994); *State v. Drake*, 288 Ill.App.3d 963, 225 Ill.Dec. 552, 683 N.E.2d 1215 (1997); *State v. Toups*, 792 So.2d 18 (La.Ct.App.2001).

individually wrapped packets of PCP. In spite of a strong dissent by Chief Judge Robert Murphy, the majority found insufficient evidence that Leach had exercised "actual or constructive dominion or control" over the illegal drugs, even though it was clear that he had some proprietary interest in the apartment and some of the incriminating evidence turned up in his bedroom. *Id.* at 595, 463 A.2d 872. Neither Judge Rodowsky, writing for the six-judge majority, nor Judge Murphy, in dissent, mentioned the *Folk* test.

Next, in *Dawkins v. State*, 313 Md. 638, 547 A.2d 1041 (1988), the Court of Appeals meaningfully expanded the *Garrison* analysis when it held that criminal possession included the element of knowledge. It clarified that, along with showing dominion or control, "[t]he accused, in order to be found guilty, must know of both the presence and the general character or illicit nature" of the item possessed. *Id.* at 651, 547 A.2d 1041. The Court reversed Leonard Dawkins's conviction, even though police observed him enter an apartment carrying a tote bag, in which, twenty minutes later, they found narcotics paraphernalia and heroin residue. Judge Eldridge, writing for a unanimous Court, never mentioned the *Folk* four-part test, which presumably Dawkins satisfied by carrying the tote bag.

In three important cases since *Dawkins*, the Court of Appeals has ignored the *Folk* test. In *Livingston v. State*, 317 Md. 408, 564 A.2d 414 (1989), a state trooper, who stopped a vehicle for speeding, was found to have lacked probable cause to arrest a back seat passenger for possession of two marijuana seeds discovered on the front floor of the car. The Court wrote, in reversing the conviction and finding a lack of probable cause: "Merely sitting in the backseat of the vehicle, Livingston did not

demonstrate to the officer that he possessed any knowledge of, and hence, any restraining or directing influence over two marijuana seeds located on the floor in the front of the car." *Id.* at 415-16, 564 A.2d 414. Judge Blackwell, writing for a unanimous Court, cited *Garrison*, *Leach*, and *Dawkins* for their discussion of what it means to knowingly exercise dominion and control.[3]

In *Taylor v. State*, 346 Md. 452, 697 A.2d 462 (1997), the Court of Appeals reversed this Court's unreported opinion sustaining a possession conviction, in which we found that "appellant's presence in a room where marijuana had recently been smoked l[ed] to the inference that appellant had himself smoked marijuana." *Id.* at 457, 697 A.2d 462. Judge Raker, writing for a unanimous Court, cited *Garrison* and *Leach* to explain possession. The Court clarified:

> Possession requires more than being in the presence of other persons having possession; it requires the exercise of dominion or control over the thing allegedly possessed. Without more, [Richard Taylor's] presence in the room where marijuana had recently been smoked does not support a rational inference that [he] had possessed marijuana. Furthermore, the existence of smoke in a room

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[3] The Court applied *Garrison* and *Leach*, which questioned the sufficiency of the evidence, to *Livingston*, which questioned the existence of probable cause to arrest, thereby conflating the appropriate analysis in both types of cases. Of course, "probable cause requires less evidence than that which is essential to sustain a conviction." *Collins v. State*, 322 Md. 675, 681, 589 A.2d 479 (1991).

> occupied by five people does not alone justify the inference that [Taylor] was engaged in the mutual use or enjoyment of the contraband.

Id. at 459, 697 A.2d 462 (citations omitted). While the Court acknowledged that Taylor's proximity to the concealed contraband created a suspicion of guilt, it stated emphatically that "[m]ere proximity ... is insufficient to support a finding of possession." *Id.* at 460, 697 A.2d 462 (quoting *Murray v. United States*, 403 F.2d 694, 696 (9th Cir.1968)). Once again, the Court did not mention the *Folk* test in reversing the conviction.

In the most recent case of *White v. State*, 363 Md. 150, 767 A.2d 855 (2001), the Court of Appeals, per Judge Harrell, reversed this Court for having sustained a conviction after applying the *Folk* test. Defendant White had challenged the sufficiency of the evidence on his convictions for possession of cocaine and related charges. Recognizing that the Office of the Attorney General had fashioned its argument to demonstrate compliance with the *Folk* test, the Court of Appeals, nevertheless, did not apply *Folk*. It stayed the course set by its precedents and focused on whether White knew about the drugs found in the trunk of his car and whether he exercised control over them. After reviewing the record in a light most favorable to the State, the Court found the evidence insufficient as a matter of law. Although the Court did not reject the *Folk* test outright, referencing *Taylor*, it again denounced proximity as a litmus test for determining possession.

Mindful of *Garrison* and its progeny, I believe the majority has stopped far short of considering whether Pringle, in any way, knowingly exercised dominion or control over the secreted contraband, and has resorted instead to "speculation or conjecture." *Taylor*, 346 Md. at

459, 697 A.2d 462. Although Pringle, like Folk, may have been within an arm's reach of the drugs, in fact, to expose the drugs, he would have had to stretch his body, maneuver around the back of his seat, and pull down the arm rest. And unlike Folk, Pringle was not sitting in a closed car that emanated the pungent, easily detectable smell of marijuana, which were critical facts in Judge Moylan's analysis sustaining Folk's conviction thirty years ago. Although the majority attaches some significance to the large roll of currency found in the glove compartment, located in front of Pringle's seat, cash, in and of itself, is innocuous and certainly less suspicious than the scales and cutting tools discounted by the Court of Appeals in *Leach*. Further, there was no showing whatsoever that Pringle, as a passenger in the car, had any connection to, or knowledge of, the money found within the glove compartment of someone else's car. *See White*, 363 Md. at 167, 767 A.2d 855.

While the majority recognizes that *Folk* does not provide "a bright line rule that permits law enforcement officials and trial courts to find joint possession if the facts of a case satisfy any one of the four factors," it proceeds to sustain the conviction based only on the "proximity" factor enumerated in *Folk* and to conclude that, because the secreted cocaine was within arm's reach, as the marijuana was in *Folk*, that Pringle was in joint possession. To be sure, the *Folk* test may be useful in organizing the evidence presented in a joint possession case, and it may assist in reaching the conclusion that a particular person did in fact exercise some dominion or control over a prohibited drug. The majority, however, wrongly treats the individual *Folk* factors as litmus tests, in place of the more balanced and more delicate jurisprudence developed

by the Court of Appeals in the last three decades.

Next, I would find that the confession, which resulted from an illegal arrest, should be barred as the fruit of a poisonous tree. *Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). For the majority, of course, there is no tree to purify, and no fruit to be plucked.

Even were the arrest legal and in compliance with the Fourth Amendment, I would bar the admission of the confession because it was improperly induced. The majority, in its discussion of the fundamental law governing the admission of confessions, has it right: confessions are permitted at trial if they conform with the Maryland Declaration of Rights, Maryland non-constitutional law, and the voluntariness requirement of the Due Process Clause of the *U.S. Constitution*. Further, the confession must conform with *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and those cases interpreting it. I depart from the majority's opinion, however, that the confession here was voluntary. The admitted threat by the police to arrest all the occupants of the car unless someone confessed was "a coercive barnacle [ ] that ... prevent[ed] the [subsequent] expression from being voluntary." *Hillard v. State*, 286 Md. 145, 150, 406 A.2d 415 (1979). The spoken threat, although perhaps not as serious as a threat to arrest a near relative as in *Stokes v. State*, 289 Md. 155, 161, 423 A.2d 552 (1980), was from a due process point of view, equally impermissible.

At common law, courts excluded only confessions that were unreliable. See Welsh S. White, *False Confessions and the Constitution: Safeguards Against Untrustworthy Confessions*, 32 Harv. C.R.-C.L.L.Rev. 105, 111-12

(1997). Constitutional due process, as we understand it today, rejects confessions that are untrustworthy and confessions that may be trustworthy, but, nonetheless, are involuntary. *See id.* at 112-13. The tactic of threatening third persons to obtain a confession is likely to produce unreliable and involuntary statements, which are more the product of fear and anxiety than truthful disclosure. Our holding sanctions law enforcement officials to choose from a group, however large, some volunteer to take the fall for friends or relatives. Confessions so induced would lack the reliability that due process and our developed law commendably demands. Indeed, the majority holding thwarts the wisdom and sensitivity carefully nurtured in our law of criminal procedure.

On the remaining issue, I concur that the so-called expert testimony did not warrant reversal, not because its admission was proper, but because Pringle did not preserve the error of its admission. The prosecutor asked Detective Massoni for an opinion about whether the drugs, which had been separately packaged, were intended to be distributed. The detective, as a qualified expert, could express an opinion as to whether they were or not, and the court properly overruled the defense's objection to that question. But Detective Massoni went further in his answer and said that the drugs were to be distributed "either to regain money or to be used for sex," a conclusion based not upon his expertise, but wholly grounded in the confession that Officer Snyder had extracted from Pringle. The detective asserted, in effect, that he believed Pringle's confession was accurate, an opinion that is barred by *Bohnert v. State*, 312 Md. 266, 278, 539 A.2d 657 (1988) (holding that "[t]estimony from a witness relating to the credibility of another witness is to

be rejected as a matter of law.").

The answer was flawed for an additional reason. The detective, by commenting about Pringle's intent, violated Maryland Rule 5-704(b), which prohibits an expert from giving an opinion about a defendant's mental state, when that is an element of the crime charged. The Court of Appeals, in *Hartless v. State*, 327 Md. 558, 611 A.2d 581 (1992), likewise condemned such expert testimony. The majority holds that, because the detective testified about how the drugs were intended to be used, he did not testify explicitly about Pringle's state of mind. Such a distinction is unconvincing, however, because the detective specifically referenced the particular intent expressed in Pringle's confession, not the intent he, as an expert, drew from the packaging of the drugs. So, the answer was doubly inadmissible. Detective Massoni essentially declared: "Pringle told Officer Snyder that his intent was to exchange the drugs for money or sex, and I believe him!" The detective's expertise did not permit him to garner such a conclusion. He also may have intended to disparage Pringle in the minds of the jurors, which the evocative statement likely accomplished.

Nevertheless, Pringle did not move to strike the detective's objectionable answer. Maryland Rule 4-323 clearly requires contemporary objections to perceived errors so that trial courts can attempt to correct them as they arise. *See Hall v. State*, 119 Md.App. 377, 389, 705 A.2d 50 (1998). Consequently, I would affirm on this issue, but not in a way, as the majority has, that condones what the prosecutor and expert police witness did in this case.

APPENDIX C

THE CIRCUIT COURT FOR
BALTIMORE COUNTY, MARYLAND

STATE OF MARYLAND

vs.

JOSEPH PRINGLE

Case Number: 99-CR-3578

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REPORTER'S OFFICIAL
TRANSCRIPT OF PROCEEDINGS
Motions Hearing

Towson, Maryland
March 23, 2000

BEFORE: THE HONORABLE ALEXANDER WRIGHT, JR., Associate Judge

APPEARANCES:

On Behalf of the State:
DANIEL BERNARD TRIMBLE, ASSISTANT STATE'S ATTORNEY

On Behalf of the Defendant:
DONALD ZAREMBA, ASSISTANT PUBLIC DEFENDER

Reported By:
Kathleen A. Papesh

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THE COURT: Thank you. Very well. the Court has listened to the testimony in this particular case. The Court does feel that the officer acted properly. That the officer did not violate any of the Defendant's constitutional rights. There was a consent search of the vehicle. Upon the search drugs were found within an arm's reach of the Defendant, not in a secretive place or in a locked place. As well as put the armrest back up. The other factor that was not argued is the fact that there was money in front which you have money in front, drugs in the back, both in arm's reach of this particular Defendant, I think the officer had probable cause to make the arrest as he did. He took them to the Garrison Precinct. I don't believe that there were any unconstitutional threats made to him. He gave him his Miranda rights. He asked him if he wanted to make a statement, which he did. The Court does not find any unconstitutional infirmities as well.

Motion denied.

MR. ZAREMBA: Thank you.

THE COURT: Thank you very much.

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(WHEREUPON, the Court adjourned.)